Ye Olde Caselaw Update 2015-16 A.D.

Being a compendium of opinions
As issued by the
Ryte Honorable Justices
Of
The Illinois Appellate and
Supreme Courts

COMPILED AND COLLATED BY
KEITH GRANT, ESQ.
CHIEF, PROFESSIONAL DEVELOPMENT & SPECIAL DEFENSE
OFFICE OF THE PUBLIC DEFENDER
IMMEDIATE PAST PRESIDENT
LAKE COUNTY BAR ASSOCIATION

ACCOUNTABILITY

People v. Cowart, 2015 IL App (1st) 113085 (February 9, 2015) Cook Co.,1st Div. (CUNNINGHAM) Reversed.
Defendant was convicted, after jury trial, of first-degree murder under theory of accountability; and after simultaneous bench trial outside presence of jury, was also convicted of being armed habitual criminal. State failed to prove beyond a reasonable doubt that there was a common criminal design between Defendant and the victim's killer, to establish Defendant's intent to promote or facilitate the crime. Thus, evidence was insufficient to convict Defendant of murder under accountability theory. Because Defendant's prior conviction for AUUW (aggravated unlawful use of a weapon) was based on statute found unconstitutional and void ab initio in People v. Aguilar case, it cannot stand as predicate offense for Defendant's armed habitual criminal conviction. (DELORT and CONNORS, concurring.)

People v. Ulloa, 2015 IL App (1st) 131632 (June 30, 2015) Cook Co., 2d Div. (NEVILLE) Reversed and remanded.
Defendant was convicted, after jury trial, of conspiring to deliver cocaine. Court misstated applicable law by its use of accountability instruction and insertion of accountability language in issues instruction was plain error, requiring reversal, as evidence was closely balanced. On remand, court must instruct jurors that to find Defendant guilty as charged, they must find that he personally agreed to delivery of more than 900 grams of a substance containing cocaine. Court did not abuse its discretion in admitting testimony that Defendant bought a money counter and a heat sealer from a store in Cicero 11 months prior to encounter in issue. (PIERCE, specially concurring; LIU, concurring.)

People v. Malcolm, 2015 IL App (1st) 133406 (August 10, 2015) Cook Co., 1st Div. (CUNNINGHAM) Affirmed.
Defendant was convicted, after bench trial, of first-degree murder and robbery; co-Defendant identified Defendant as person holding cell phone and recording assault of victim. Defendant was a friend of co-Defendant, and knew that another co-Defendant had recently been released from juvenile detention and made statements indicating that illegal acts that could cause great bodily harm were going to occur. Court properly considered this factor, and the factor that Defendant did not call police and fled scene, in convicting Defendant based on theory of accountability. Court within its discretion in sentencing Defendant to 22 years for first-degree murder and 8 years for robbery.(CONNORS and HARRIS, concurring.)

ADMONISHMENTS

People v. Norton, 2015 IL App (2d) 130599 (February 19, 2015) Winnebago Co. (McLAREN) Appeal dismissed.
Defendant was convicted, after bench trial, of aggravated domestic battery. Court heard and denied his motion to reconsider sentence of imprisonment and restitution, and then heard and denied motion for new trial, after evidentiary hearing, ending on court's entry of denial. Trial court misadvised Defendant that the time in which he could appeal was tolled when actually it was not tolled. Although Defendant's loss of his right to appeal was rooted in incorrect advice from the trial court, the appellate court lacks authority to disregard its lack of jurisdiction.(JORGENSEN and SPENCE, concurring.)

People v. Moore, 2015 IL App (5th) 130125 (April 28, 2015) Perry Co. (STEWART) Affirmed.
At time sentence was imposed, after stipulated bench trial, court gave incorrect admonishment as to timing for and method of appealing; court should have admonished him under Rule 605(a). When Defendant filed petition for leave to file untimely posttrial motion and notice of appeal, court's jurisdiction had long since lapsed. As notice of appeal was untimely, admonition exception does not apply. Court thus properly dismissed Defendant's motion for leave to file untimely posttrial motion and notice of appeal. (SCHWARM and MOORE, concurring.)

People v. Guzman, 2015 IL 118749 (November 19, 2015) Will Co. (KILBRIDE) Appellate court affirmed.
Illinois Supreme Court's 2009 decision in People v. Delvillar held that statutory admonishment on potential immigration consequences of entering a guilty plea is directory, not mandatory, and potential immigration consequences of plea are collateral, not direct. Thus, failure to admonish did not affect voluntariness of plea, and Defendants were required to show prejudice or denial of justice to withdraw their pleas on that basis. That decision stands, under principle of stare decisis, even after U.S. Supeme Court's 2010 decision in Padilla v. Kentucky. Padilla case required defendants to establish a reasonable probability that they would not have pled guilty if they had been properly admonished.(GARMAN, FREEMAN, THOMAS, KARMEIER, BURKE, and THEIS, concurring.)

BATTERY

People v. Taylor, 2015 IL App (1st) 131290 (June 19, 2015) Cook Co., 5th Div. (GORDON) Reversed.
Defendant was convicted, after bench trial, of aggravated assault, after she yelled profanities at deputy sheriff who was ushering her out of courthouse, and issued a final verbal threat as she exited through airlock doors, venting her displeasure. In light of spatial differences, and other circumstances reflected in the record, evidence was insufficient to support the determination beyond a reasonable doubt that deputy was placed in objective and reasonable apprehension of receiving a battery. Mere words alone without a gesture objectively does not place a person in reasonable apprehension of receiving a battery. (PALMER and REYES, concurring.)

People v. Messenger, 2015 Il App (3d) 130581 (September 1, 2015) Whiteside Co. (SCHMIDT) Affirmed.
Defendant was convicted of aggravated battery, for committing battery upon another inmate in a common area for inmates while both were incarcerated at County Jail. Defendant was properly convicted of aggravated battery on the theory that the area inside the County Jail was "public property" within the meaning of section 12-3.05(c) of the Criminal Code of 2012. Even though place where battery occurred was not open to the public, court properly took judicial notice that county jail was "public property" and obtained necessary information. (O'BRIEN, concurring; CARTER, specially concurring.)

BURGLARY

People v. Murphy, 2015 IL App (4th) 130265 (March 18, 2015) Macon Co. (TURNER) Judgment vacated.
Defendant was convicted, after jury trial, of two counts of burglary. State failed to proved that Defendant entered pawn shop with intent to commit therein a theft of stolen property. Defendant pawned electronic game equipment and camera, later identified as items which had been stolen from homes, at a pawn shop. Defendant admitted buying merchandise "on the street", but denied going into a home and stealing items, and never admitted that he knew items had been stolen. State was required to prove Defendant knowingly obtained control over stolen property knowing property to have been stolen or under circumstances as would reasonably induce Defendant to believe it was stolen. (KNECHT, concurring; STEIGMANN, dissenting.)

People v. Burton, 2015 IL App (1st) 131600 (August 5, 2015) Cook Co., 3d Div. (HYMAN) Affirmed.
Defendant was convicted, after jury trial, of burglary of car parked in a factory lot. Court properly allowed into evidence a photo of factory parking lot; even though photo showed a "no trespassing" sign, and State did not show that sign was present on date of crime, relevancy outweighed any prejudice. Photo was not improper other-crimes evidence, as no evidence

suggests that Defendant committed any crime other than burlglary. Although court erred in failing to ask Defendant if he agreed with his counsel's request for a lesser-included jury instruction, it was not plain error, as evidence was not so closely balanced as to present doubt. Court within its discretion in sentencing Defendant to 9 years, which was within statutory range of 6 to 30 years. (LAVIN and MASON, concurring.)

People v. Bradford, 2016 IL 118674 (March 24, 2016) McLean Co. (BURKE) Appellate court reversed; circuit court reversed.
Defendant, having entered store during store hours, shoplifted 5 items totaling less than $300, and existed store during store hours, after which he was stopped by store security personnel. State failed to prove that Defendant remained within the store without authority as charged under the burglary statute. A person commits burglary by remaining in a public place only where he exceeds his physical authority to be on the premises as a member of the public to be in store. Interpreting conduct as sufficient for burglary is unworkable, has the potential to lead to absurdity, and is inconsistent with retail theft statute and with historical development of burglary statute. (GARMAN, FREEMAN, THOMAS, KILBRIDE, KARMEIER, and THEIS, concurring.)

People v. Sanderson, 2016 IL App (1st) 141381 (April 20, 2016) Cook Co., 3d Div. (MASON) Affirmed in part and reversed in part.
Attempted residential burglary is not a "forcible felony", as its elements do not include a specific intent to carry out a violent act. No evidence, under facts of this case, that Defendant contemplated the use of force. Thus, State did not prove beyond a reasonable doubt Defendant's willingness to use violence against another. As Defendant's conviction for attempted residential burglary could not serve as one of the predicate offenses for armed habitual criminal, his conviction for that offense is reversed. (FITZGERALD SMITH and PUCINSKI, concurring.)

COLD DEAD FINGERS

In re the Interest of Jordan G., 2015 IL 116834 (February 20, 2015) Cook Co. (THEIS) Remanded.
Respondent, age 16, was charged under Juvenile Court Act with three counts of Aggravated Unlawful Use of a Weapon (AUUW) statute and one count of unlawful possession of a firearm. Illinois Supreme Court's holding in Aguilar case, that age-based restrictions on right to keep and bear arms are historically rooted, applies equally to persons under age 21. Charges based on Class 4 form of Section 24-1.6(a)(1), (a)(3)(A) of AUUW statute are dismissed as facially unconstitutional per Aguilar decision. Sections 24-1.6(a)(1), (a)(3)(C) and (a)(3)(I) of AUUW statute are constitutional and severable from unconstitutional provision of statute.(GARMAN, FREEMAN, THOMAS, KILBRIDE, KARMEIER, and BURKE, concurring.)

People v. Almond, 2015 IL 113817 (February 20, 2015) Cook Co. (KILBRIDE) Appellate court reversed in part and affirmed in part.
Defendant was arrested in a liquor store, found to have an uncased and loaded .38-caliber handgun in his waistband. Defendant's conviction and sentence for Unlawful Use of a Weapon (UUW) by a felon, based on Defendant's possession of firearm ammunition, is reinstated. Defendant was properly convicted of armed habitual criminal based on his possession of a firearm and UUW by a felon based on his possession of firearm ammunition. Underlying incident, where police officers arrived at liquor store in squad car, in plain clothes but with badges visible, and then Defendant entered store, was a consensual encounter, as it was not coercive or unusual. No Fourth Amendment violation when officer searched Defendant for weapon after Defendant told him that he was armed. That UUW by a felon statute does not expressly distinguish between loaded and unloaded firearms does not render statute ambiguous. Statute authorizes separate convictions for simultaneous possession of a firearm and ammunition in a single loaded firearm. Separate convictions do not violate one-act, one-crime rule. (FREEMAN, THOMAS, KARMEIER, BURKE, and THEIS, concurring.)

People v. Mosley, 2015 IL 115872 (February 20, 2015) Cook Co. (KARMEIER) Circuit court affirmed in part and reversed in part; remanded.
Under plain language of AUUW statute, a person may only be sentenced under subsection (d)(2) if the factors constituting the AUUW offenses identified in both subsections (a)(3)(A) and (a)(3)(C) are present., but because the former subsection has been found unconstitutional, the requirements for sentences cannot be met. Thus, subsection (2) of sentencing subsection (d) of AUUW statute is invalid; but it is not such an interdependent and essential part of statute that its severance requires rest of statute to fail. Trial court properly vacated Defendant's Class 4 convictions of AUUW, as offenses charged are based on Sections 24-1.6(a)(1), (a)(3)(A), and 24-1.6(a)(2), (a)(3)(A), which are unconstitutional. (GARMAN, FREEMAN, THOMAS, KILBRIDE, BURKE, and THEIS, concurring.)

People v. Moreno, 2015 IL App (3d) 130119 (March 25, 2015) Will Co. (SCHMIDT) Reversed in part and remanded with directions.
Defendant was convicted, after bench trial, of reckless discharge of a firearm (for shooting his .22-caliber handgun into the ground at a New Year's Eve party) and unlawful possession of a controlled substance. Defendant did not fire gun into the air or near to any persons; other partygoers were behind him, and his conduct did not create substantial risk of endangering bodily safety of others. (LYTTON, concurring; WRIGHT, dissenting.)

People v. Frederick, 2015 IL App (2d) 140540 (March 20, 2015) Stephenson Co. (SCHOSTOK) Reversed.
(Modified upon denial of rehearing 4/16/15.) Department of State Police issued Respondent a FOID card in 2011. Department revoked his FOID card in 2013, pursuant to 2013 Amendments FOID Act, based on Respondent's 1991 conviction of domestic battery. Court erred in granting

Respondent's petition for issuance of FOID card. Direct appeal to circuit court is permitted when denial or revocation of FOID card was based on enumerated offense such as domestic battery. 2013 Amendments to Act must be applied to Respondent's petition, as Amendments do not penalize a person's past conduct, but affect present and future eligibility to hold a FOID card. (ZENOFF and BURKE, concurring.)

People v. Deleon, 2015 IL App (1st) 131308 (May 28, 2015) Cook Co., 4th Div. (ELLIS) Reversed.
Defendant was convicted, after bench trial, of unlawful sale or delivery of a firearm. State's evidence showed that Defendant acted as straw purchaser of handgun for his friend at store in Indiana and then gave gun to friend after return to Illinois. Defendant and his friend were not "buyer and seller" and did not reach an "agreement to purchase" a firearm under Section 24-3(A)(g) of Criminal Code. Providing service of acting as a straw purchaser for another person, where that service is the only purpose of the transaction between the two persons, and the price of the gun was not integral part of transaction, no violation of Section 24-3(A)(g). (HOWSE and COBBS, concurring.)

People v. Smith, 2015 IL App (1st) 132176 (July 15, 2015) Cook Co., 3d Div. (MASON) Affirmed as modified.
(Court opinion corrected 7/17/15.)Defendant was convicted, after bench trial, of aggravated unlawful use of weapon (AUUW) and sentenced to one year probation. Greyhound bus driver saw butt of a handgun inside backpack which Defendant had left on back seat of bus; Defendant approached driver and told him the bag was his. When driver asked him what was in bag Defendant said, "nothing but a BB gun." Defendant's statement creates reasonable inference of "knowing possession", and that he intended to retain control and possession of bag and gun.State offered sufficient evidence to establish corpus delicti and guilt of AUUW beyond a reasonable doubt. Court erred in assessing $100 street gang fine as there is no evidence in record identifying defendant as a member of a street gang when he committed AUUW offense. (LAVIN, concurring; HYMAN, dissenting.)

People v. Shreffler, 2015 IL App (4th) 130718 (August 4, 2015) Piatt Co. (STEIGMANN) Reversed.
Defendant was convicted, after stipulated bench trial, of three counts of unlawful use of weapons. Stipulated evidence failed to prove Defendant guilty of the charged offenses. "Overall length" of shotguns should have been measured by length of a straight line between two farthest points on the gun. Flash suppressor at end of rifle's barrel should have been included in measurement of barrel's length, as flash suppressor is a functional component of gun through which bullet passes when gun is fired. (HARRIS and HOLDER WHITE, concurring.)

People v. Richardson, 2015 IL App (1st) 130203 (August 10, 2015) Cook Co., 1st Div. (CUNNINGHAM) Reversed.
Defendant was convicted, after bench trial, of unlawful use of a weapon by a felon (UUWF). Defendant's prior 2010 conviction for aggravated felony (AUUWF), which was premised on a statutory provision which created Class 4 version of AUUW charge which was later held unconstitutional in Illinois Supreme Court's 2013 Aguilar decision, cannot stand as a predicate offense to support Defendant's UUWF conviction. Thus, State could not prove beyond a reasonable doubt an element of UUWF offense (a valid prior felony), and Defendant's conviction is reversed. (DELORT and HARRIS, concurring.)

People v. Faulkner, 2015 IL App (1st) 132884 (August 31, 2015) Cook Co., 1st Div. (CUNNINGHAM) Affirmed in part and reversed in part; remanded.
Defendant was convicted, after bench trial, of being armed habitual criminal and unlawful use or possession of weapon by a felon (UUWF), and sentenced to 6 years. Evidence at trial was sufficient to establish that Defendant exercised immediate and exclusive control over attic where assault rifle and ammunition were found. Because Defendant's prior conviction for AUUW was based on statute found unconstitutional and void ab initio in Illinois Supreme Court's 2013 Aguilar decision, it cannot stand as predicate offense for Defendant's armed habitual criminal conviction, and thus State could not prove beyond a reasonable doubt an element of offense of armed habitual criminal. (CONNORS and HARRIS, concurring.)

People v. Larson, 2015 IL App (2d) 141154 (September 23, 2015) Kendall Co. (ZENOFF) Affirmed.
Defendant was convicted, after bench trial, of one count of possession of firearm without valid FOID card. Defendant's FOID card had been previously revoked pursuant to entry of plenary order of protection (OP). Although OP had expired at time firearm was discovered, Defendant's FOID card was still revoked.Section 14(c)(3) of FOID Card Act provides that a violation of Section 2(a) of FOID Card Act is a Class 3 felony if offender does not possess a currently valid FOID Card and is not otherwise eligible under this Act. Legislature concluded that possession of firearms after revocation of FOID card represents a greater public-safety threat that mere failure to apply for a card. (SCHOSTOK and SPENCE, concurring.)

People v. Clark, 2015 IL App (3d) 140036 (October 5, 2015) Peoria Co. (CARTER) Affirmed in part and vacated in part; remanded with directions to properly apply $5 per day credit.
Defendant was convicted, after jury trial, of armed robbery, for holding up pizza delivery driver, pointing rifle at him. Evidence at trial, viewed in light most favorable to the State, was sufficient to prove beyond a reasonable doubt that Defendant carried a firearm. Evidence was not closely balanced as to that issue, as testimony of victim and his co-worker was unequivocal and sufficient to establish that Defendant was armed with firearm during robbery. The failure to give a jury instruction defining "firearm" was not plain error. Failure of defense counsel to tender a jury instruction did not prejudice Defendant.(O'BRIEN and SCHMIDT, concurring.)

People v. Winston, 2015 IL App (1st) 140234 (October 19, 2015) Cook Co., 1st Div. (LIU) Affirmed.
Defendant was convicted, after bench trial, of aggravated unlawful use of a weapon (AUUW). The Class 2 form of Section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute does not violate the second amendment and survives the Illinois Supreme Court's 2013 decision in Aguilar. As no sentence was imposed on Defendant's other AUUW convictions, those convictions are nonfinal, and appellate court declined jurisdiction over Defendant's challenges to those convictions. (CUNNINGHAM and CONNORS, concurring.)

People v. Johnson, 2015 IL App (1st) 133663 (October 27, 2015) Cook Co., 1st Div. (CONNORS) Affirmed.
Defendant was convicted, after bench trial, of offense of armed habitual criminal and sentenced to 7 ½ years. The offenses of armed habitual criminal and unlawful use or possession of a weapon by a felon (UUWF) do not have identical elements. As Defendant has been convicted of both a subsequent violation of UUWF statute and prior conviction for forcible felony, Defendant was appropriately charged and convicted of armed habitual criminal and thus his conviction did not violate proportionate penalties clause. Armed habitual criminal statute is not unconstitutional on its face. Amendments to FOID Card Act prohibit State Police from issuing Defendant a FOID card. (LIU and CUNNINGHAM, concurring.)

People v. Williams, 2015 IL 117470 (November 19, 2015) Cook Co. (FREEMAN) Circuit court reversed; remanded with directions.
Circuit court erred in declaring certain sections of the aggravated unlawful use of a weapon (AUUW) statute unconstitutional. The AUUW statute has an additional location element, that the person is knowingly carrying on his person or in any vehicle, outside the home, a firearm without having been issued a valid FOID Card. Thus, the offense of AUUW and a violation of the FOID Card Act are not identical. Tthere can be no proportionate penalty violation, as the location element in AUUW, which is absent from the FOID Card Act, is an additional element that must be proved to establish a violation of AUUW. (GARMAN, THOMAS, KILBRIDE, KARMEIER, BURKE, and THEIS, concurring.)

People v. Holmes, 2015 IL App (1st) 141256 (November 25, 2015) Cook Co., 5th Div. (PALMER) Affirmed.
Defendant was arrested when police officer observed a revolver in his waistband. Police then discovered that Defendant did not have a FOID card, and charged Defendant with 2 counts of aggravated unlawful use of a weapon (AUUW) for carrying a firearm without a valid FOID card. Court properly suppressed the evidence, as the facially invalid AUUW statute is void ab initio, so that the good-faith exception to the exclusionary rule is inapplicable. The void ab initio doctrine applied both to legislative acts that were found unconstitutional for violating substantive

constitutional guarantees as well as those adopted in violation of single subject clause. (REYES and LAMPKIN, concurring.)

People v. Schweihs, 2015 IL 117789 (December 3, 2015) Kane Co. (THEIS) Circuit court reversed; remanded.
Section 24-1.6(a)(1), (a)(3)(C) of the Aggravated Unlawful Use of a Weapon (AUUW) statute does not violate the proportionate penalties clause of the Illinois Constitution, or the equal protection clauses of the U.S. and Illinois Constitutions. The location element in Section 24-1.6(a)(1) remains a viable element of the AUUW statute when combined with subsection (a)(3)(C).(GARMAN, FREEMAN, THOMAS, KILBRIDE, KARMEIER, and BURKE, concurring.)

In re Nasie M., 2015 IL App (1st) 151678 (December 1, 2015) Cook Co., 2d Div. (HYMAN) Reversed.
State charged minor, then age 17, with reckless discharge of a firearm, 2 counts of aggravated unlawful use of a weapon, and unlawful possession of a firearm. Minor sustained gunshot wounds to his foot and was taken to a hospital. Police officer testified that minor told him he was holding a gun and shot himself while running away from 2 men he thought were going to rob him. Minor denies that he shot himself, and says that 1 or both men shot him. State failed to prove beyond a reasonable doubt that minor possessed a firearm, and thus could not prove he committed the 3 offenses charged. State offered no eyewitnesses to shooting or any evidence that minor was in possession of gun when he injured his foot.(NEVILLE and SIMON, concurring.)

People v. Burns, 2015 IL 117387 (December 17, 2015) Cook Co. (BURKE) Appellate court reversed.
Defendant was convicted, after jury trial, of aggravated unlawful use of a weapon (AUUW). The offense of AUUW, as set forth in section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute, is facially unconstitutional. As a result, the provision is not enforceable against anyone, including Defendant. (FREEMAN, KILBRIDE, KARMEIER, and THEIS, concurring; GARMAN and THOMAS, specially concurring.)

People v. Dixon, 2015 IL App (1st) 133303 (December 22, 2015) Cook Co., 2d Div. (NEVILLE)
People v. Harris, 2015 IL App (1st) 133892 (December 22, 2015) Cook Co., 2d Div. (NEVILLE)
Reversed and remanded.
(Court opinion corrected 1/14/16.) Defendant was convicted, after bench trial, of armed robbery. State failed to present evidence that Defendant was armed with a gun that had weight or composition (metallic nature) of a dangerous weapon. Defendant's statement was unrebutted that he carried a BB gun during the robbery, and that the BB gun broke when it was dropped. Evidence presented by the State failed to prove, beyond a reasonable doubt, that Defendant was armed with a gun that was a dangerous weapon because it could be used as a bludgeon.

Remanded for entry of judgment of conviction for robbery and appropriate sentence. (PIERCE and HYMAN, concurring.)

People v. Tolbert, 2016 IL 117846 (January 22, 2016) Cook Co. (BURKE) Appellate court vacated; remanded.
The invitee requirement is an exemption to the offense of aggravated unlawful use of a weapon statute for possessing a handgun while under age 21 that the defendant must raise and prove. A defendant charged under that statute will avoid criminal liability if the firearm was carried while on the land or in the legal dwelling of another persona as an invitee with that person's permission. The invitee requirement is not an element of the offense. (GARMAN, FREEMAN, THOMAS, KILBRIDE, KARMEIER, and THEIS, concurring.)

People v. McGee, 2016 IL App (1st) 141013 (February 16, 2016) Cook Co., 2d Div. (PIERCE) Affirmed in part and vacated in part; remanded.
Defendant was convicted, after jury trial, of armed habitual criminal (AHC) and unlawful use of a weapon by a felon (UUWF). A conviction under the portion of the aggravated unlawful use of a weapon (AUUW) statute found unconstitutional under People v. Aguilar and People v. Burns cannot stand where the Defendant's predicate felony as alleged in the charging document is based on a conviction for a UUW or AUUW offense that is facially unconstitutional under Aguilar. A prior felony conviction is not an element of offense of AUUW, but a factor to be used in enhancing the sentence, and the Defendant's predicate felony drug conviction was not a valid constitutional basis to criminalize Defendant's firearm possession. As State alleged 2 prior felony convictions, and one conviction is fatally defective, State failed to prove essential element of offense of AHC. As to other count charging Defendant with possession of firearm after having been previously convicted of felony offense, Defendant had a constitutionally valid qualifying felony conviction and thus State proved all elements of the merged conviction for UUWF.(SIMON and HYMAN, concurring.)

People v. Ligon, 2016 IL 118023 (February 19, 2016) Cook Co. (KARMEIER) Appellate court reversed; circuit court affirmed.
Defendant was convicted, after jury trial, of aggravated vehicular hijacking with a dangerous weapon, other than a firearm (AVH/DW), a Class X felony. Defendant, while armed with a BB gun, approached a woman as she was getting out of her pickup truck, and took vehicle from her.BB gun was a common-law dangerous weapon of the third type. Trial court properly denied Defendant's Section 2-1401 petition for relief from judgment alleging proportionate penalties violation. Defendant's mandatory life sentence imposed as an adjudged habitual criminal under Section 33B-1 of Criminal Code is affirmed. (GARMAN, FREEMAN, THOMAS, KILBRIDE, BURKE, and THEIS, concurring.)

People v. Clark, 2016 IL 118845 (March 24, 2016) Cook Co. (KARMEIER) Appellate court affirmed.
(Court opinion corrected 4/8/16.) Defendant was charged with multiple offenses, including aggravated vehicular hijacking while armed with a firearm and armed robbery while armed with a firearm, for accosting a man who was parking his vehicle in his garage, taking it from him. Plain language of Sections 18-2(a)(1) and 18-4(a)(3) of Code of Criminal Procedure explicitly excludes possession or use of a firearm. Thus, a violation of Sections of Code for offenses committed with firearms and those Sections for offenses committed with weapons other than firearms are mutually exclusive. Although Defendant was acquitted of the charged firearm offenses, he stands convicted of and sentenced for uncharged offenses he did not commit. Improper convictions and sentences are corrected via remedial application of plain error.Convicting a defendant of an uncharged offense that is not a lesser-included of offense of a charged offense violates a defendant's due process right to notice of the charges against him.Appellate court properly reduced degree of convictions to lesser-included offenses of vehicular hijacking and robbery and remanded for resentencing. (GARMAN, FREEMAN, THOMAS, KILBRIDE, BURKE, and THEIS, concurring.)

CONFESSION (suppressed)

People v. Neese, 2015 IL App (2d) 140368 (April 21, 2015) Boone Co. (BIRKETT) Reversed and remanded.
Defendant was indicted on one count of felony theft, based on theft of coins from washing machine in apartment building. Court granted Defendant's motion to suppress statements he made to a police officer during phone conversation, finding that statements they were made during plea discussion. Rule 402(f) did not apply to phone conversation between officer and defendant. There was no evidence that Defendant subjectively expected that he was involved in any plea discussion, but only comments that Defendant intended to provide written statement in exchange for officer charging him with only a misdemeanor. Even if Defendant had subjective expectation of negotiating a plea, it would not have been objectively reasonable, as nothing would indicate to a reasonable person in Defendant's position that officer had authority to engage in a plea discussion, to offer plea deal, or enter into plea agreement.(HUTCHINSON and HUDSON, concurring.)

People v. Marion , 2015 IL App (1st) 131011 (May 12, 2015) Cook Co., 2d Div. (NEVILLE) Reversed.
(Modified upon denial of rehearing 5/12/15.) State failed to offer any credible rebuttal to Defendant's credible testimony, and Defendant thus sufficiently proved that he produced guns in response to police officer's promise not to arrest him in exchange for getting guns off the street. Police have authority to agree not to arrest a suspect in exchange for cooperation with police

work, and officer's agreement with Defendant was thus enforceable.(SIMON and LIU, concurring.)

People v. Coleman, 2015 IL App (4th) 140730 (July 20, 2015) Sangamon Co. (POPE) Affirmed. Initial determination of custody depends on objective circumstances of interrogation, not on subjective views harbored by officers or by person being questioned. A failure to admonish a defendant pursuant to Miranda warnings cannot be excused based on mere fact that Defendant incorrectly believed he was not in custody for Miranda purposes. Defendant was handcuffed and questioned about any independent crime, which objectively would have led a reasonable person to believe he was not free to leave or terminate encounter. Under totality of circumstances, defendant was entitled to be given Miranda warnings before being questioned because he was in custody for Miranda purposes.(HARRIS, concurring; STEIGMANN, dissenting.)

People v. Tyler, 2015 IL App (1st) 123470 (September 11, 2015) Cook Co., 5th Div. (GORDON) Affirmed in part and reversed and remanded in part.
Defendant, age 17 and with no prior record at time of offense, was tried as an adult and convicted of first-degree murder after jury trial in 1995. Only evidence at trail implicating Defendant in the murder was testimony of witness who testified she saw Defendant run through an alley carrying a gun shortly after shooting, and Defendant's confession that he acted as a lookout for the shooter. Defendant testified at trial that a detective physically beat him into giving false confession. Reversed and remanded in part for 3rd-stage evidentiary hearing on Defendant's claim of coerced confession. Defendant is entitled to have evidence of systemic police misconduct considered by trial court at evidentiary hearing, as evidence was sufficient to relax requirements of res judicata and evidence made a substantial showing of a constitutional violation. Evidence of systemic police misconduct is new, material, noncumulative, and is so conclusive it could reasonably change the result on retrial, as evidence is sufficient to support Defendant's claim of actual innocence. (REYES and McBRIDE, concurring.)

People v. Weathers, 2015 IL App (1st) 133264 (November 25, 2015) Cook Co., 4th Div. (McBRIDE) Reversed and remanded.
Defendant was convicted, after bench trial, of first degree murder in 2002 shooting death, and sentenced to 75 years. Court erred in denying his motion for leave to file successive postconviction petition, as his claims of a physically coerced confession have never been reviewed. Defendant attached portions of 2012 Illinois Torture Inquiry and Relief Commission (TIRC) report, which related to detectives that interrogated him, and contended that it was newly discovered evidence as it was not available at the time of his initial postconviction petition in 2009. Defendant established requisite cause, in than an objective factor impeded his ability to raise this claim earlier. Defendant satisfied prejudice prong as the use of a Defendant's physically coerced confession as substantive evidence of his guilt is never harmless error.(HOWSE and ELLIS, concurring.)

People v. Wright, 2016 IL App (5th) 120310 (January 15, 2016) Marion Co. (GOLDENHERSH) Reversed and remanded.
Defendant was convicted, after jury trial, of armed robbery and unlawful possession of a controlled substance. Court erred in denying Defendant's motion to suppress statements made after his arrest. Officer's language and actions were particularly evocative, and likely to elicit incriminating response from Defendant. Officer handcuffed Defendant, placed him in back of a patrol car, and engaged him in ongoing conversation, including asking him at least one question and discussing evidence against him, and officer drove Defendant to area where Defendant could see police questioning the mother of Defendant's 3 children. Officer subjected Defendant to functional equivalent of a police interrogation without providing Miranda warnings.(SCHWARM, concurring; WELCH, dissenting.)

People v. Gempel, 2016 IL App (3d) 140833 (January 26, 2016) Will Co. (HOLDRIDGE) Affirmed.
State charged Defendant by indictment with first degree murder and concealment of a homicidal death in death of his neighbor. Court properly granted Defendant's motion to suppress. State failed to meet its burden in proving that statements made by Defendant while in custody at police department were sufficiently attenuated from taint of illegal arrest. Defendant did not voluntarily waive Miranda when he asked to speak with detective at end of 37 hours in custody. Police illegally held Defendant without probable cause, repeatedly ignored his requests to speak with an attorney, and held him nearly 37 hours before he made his statements. (O'BRIEN and LYTTON, concurring.)

People v. Tayborn, 2016 IL App (3d) 130594 (March 7, 2016) Will Co. (CARTER) Reversed and remanded.
Defendant was convicted, after jury trial, of possession of cocaine. Defense counsel provided ineffective assistance of counsel by failing to file a motion to suppress Defendant's statement that he was transporting cocaine to Iowa, which Defendant made in response to police questioning without having received Miranda warnings. During vehicle search, driver of vehicle had already been arrested and placed in a squad car. Cocaine was found in vehicle during search. As trial judge found that Defendant was in custody at time cocaine was discovered, when officer questioned Defendant a bout the cocaine, the questioning was a custodial interrogation without Defendant having first been given Miranda warnings. Defendant's statement would have been inadmissible at trial, and outcome of trial would have been different had his admission been suppressed.(WRIGHT, concurring; SCHMIDT, dissenting.)

People v. Little, 2016 IL App (3d) 140124 (March 23, 2016) Peoria Co. (WRIGHT) Reversed and remanded.
(Court opinion corrected 4/21/16.) Defendant filed motion to suppress, asking that all statements relevant to murder prosecution be suppressed as Defendant was subjected to a custodial interrogation as part of a homicide prosecution and initial custodial interrogation was not

properly electronically recorded. Defendant was "accused" of murder when court was called upon to determine admissibility of recorded second segment of interview. Preponderance of evidence establishes recorded segment of interrogation followed unrecorded segment of custodial interrogation and thus is presumed inadmissible. Second portion of custodial interrogation was presumptively inadmissible as detectives did not record preceding segment of interrogation.(CARTER and HOLDRIDGE, concurring.)

CONFESSION (allowed)

People v. Bowen, 2015 IL App (1st) 132046 (July 31, 2015) Cook Co., 5th Div. (McBRIDE) Affirmed.
Defendant was charged with possession of contraband (per indictment, a dangerous weapon, a sharp metal object) in a penal institution, and was convicted, after bench trial, and sentenced to 6 years. A large 7" sharpened metal shank was found hidden in Defendant's cell. In sentencing, court was not considering merely that Defendant possessed contraband, was used descriptive language of type of weapon and location of its discovery, which are proper sentencing considerations. Evidence was sufficient to sustain conviction, given officer's positive and unambiguous testimony about nature of shank. Circumstances of Defendant's interrogation were not inherently coercive as in custodial interrogations, which would have required Miranda warnings. (PALMER and GORDON, concurring.)

People v. Little, 2016 IL App (3d) 130683 (February 10, 2016) McDonough Co. (CARTER) Affirmed.
Defendant was convicted, after stipulated bench trial, of felony driving while license suspended or revoked and sentenced to one year conditional discharge and 60 days in jail. Court properly denied Defendant's pretrial motion to quash his arrest and suppress evidence. Deputy had reasonable suspicion to make investigatory stop of Defendant's vehicle for possible criminal trespass to real property. Deputy was responding to a live complaint of a very recent criminal trespass to real property, alleging that someone was trespassing and running dogs on his property, and that complainant took deputy to exact location of trespass, where there was one vehicle, with dogs inside of dog box in the back of vehicle. Officer may make a lawful Terry stop without first determining whether circumstances he observed would satisfy each element of a certain offense.(O'BRIEN and WRIGHT, concurring.)

People v. Buschauer, 2016 IL App (1st) 142766 (February 16, 2016) Cook Co., 2d Div. (HYMAN) Reversed and remanded.
Defendant, 13 years after his wife's death, was arrested for his wife's murder. Defendant had called 911 and claimed that his wife drowned in the bathtub. Trial court erred in granting defense motions to suppress Defendant's statements and exclude evidence seized from his home, after he

consented to search. A reasonable person in Defendant's situation would have felt free to leave at any point during police questioning at police station that occurred 1 week after wife's death. Defendant was free to leave, was never formally arrested, and was given Miranda warnings as a precaution; he was allowed to go home, after agreeing to return in the morning.(PIERCE and NEVILLE, concurring.)

People v. Tuson, 2016 IL App (3d) 130861 (February 22, 2016) Peoria Co. (LYTTON) Affirmed.
Court properly denied Defendant's motion to suppress statements he made during a police interview. Defendant was the subject of a federal use immunity agreement when he participated in the crime that resulted in a murder. Terms of federal agreement stated that immunity would no longer apply if Defendant participated in any criminal activity of any kind without authorization. Any belief that Defendant had that he was immune from prosecution when he gave his statement to county police detective was not reasonable under circumstances. Subject matter of interview was not related to subject matter of federal use immunity agreement.(O'BRIEN and SCHMIDT, concurring.)

People v. Pitts, 2016 IL App (1st) 132205 (March 24, 2016) Cook Co., 4th Div. (ELLIS) Affirmed.
Defendant was convicted, after bench trial, of unlawful use or possessions of weapons by a felon and possessing a firearm with defaced identification marks.Evidence was sufficient to establish that an offense had been committed to corroborate Defendant's confession that the guns in his home belonged to him, including the fact that guns were seized from a bedroom in his home. Defendant argued that evidence should be suppressed because complaint supporting search warrant for his home was incomplete, in that second page of the complaint, which had been signed by judge issuing warrant, had gone missing. Court properly denied motion to suppress, after State presented unsigned copy of complaint at hearing.State was not required to restore the complaint under the Court Records Restoration Act, because it had what it purported to be a complete copy of complaint. State sufficiently authenticated that copy under rules of evidence.(McBRIDE and COBBS, concurring.)

CONFRONTATION

People v. McCullough, 2015 IL App (2d) 121364 (February 11, 2015) De Kalb Co. (ZENOFF) Affirmed in part and vacated in part.
Defendant was convicted, after bench trial in 2012, of of 1957 kidnapping and murder of seven-year-old girl, when Defendant was age 18. Harmless error in admitting deathbed statement of Defendant's mother that "John did it", as other evidence was sufficient to allow rational trier of fact to find that elements of offenses had been proved beyond a reasonable doubt..(SCHOSTOK and BURKE, concurring.)

People v. Barner, 2015 IL 116949 (April 16, 2015) Cook Co. (THEIS) Appellate court affirmed. Defendant was convicted, after jury trial, of aggravated criminal sexual assault, having been arrested and charged more than three years after the crime. Reports of nontestifying witnesses as to DNA lab work, made before Defendant was charged for this offense, were not subject to confrontation requirement because, although they produced a "match", they were not made in connection with current prosecution but in connection with another unrelated homicide for which Defendant had been a suspect and for which he was never charged. Standard for determining whether a forensic report is testimonial is an objective one as to whether it was made for purpose of proving guilt at trial. (GARMAN, FREEMAN, THOMAS, KARMEIER, and BURKE, concurring; KILBRIDE, dissenting.)

Ohio v. Clark, No. 13-1352 (June 18, 2015)
The Sixth Amendment's Confrontation Clause did not prohibit prosecutors from introducing statements made by a child abuse victim to his teachers, where neither the child, who was unavailable for cross-examination, nor his teachers had the primary purpose of creating an out-of-court substitute for trial testimony.

Cited By:

People v. Burnett, 2015 IL App (1st) 133610 (Dec 18, 2015)
Affirmed.
Convicted after bench trial of violating order of protection. Victim's live testimony was that she didn't remember and would "just assume forget" defendant's threatening contacts. State read victim's earlier written statement into the record over objection. Admission of her out of court statement under the domestic violence exception to hearsay does not violate confrontation clause.

People v. Campbell, 2015 IL App (1st) 131196 (July 27, 2015) Cook Co., 1st Div. (HARRIS)
Affirmed.
Defendant was convicted of first degree murder after jury trial and sentenced to natural life in prison. Admission of witness' entire grand jury testimony did not violate right to confrontation, or requirement of Section 115-10.1 of Code of Criminal Procedure that witness be subject to cross-examination as to her statement. Counsel for both parties had opportunity to question witness at trial about her prior inconsistent testimony, and witness willingly responded to questions at trial. Although defense counsel did not formally present alibi defense, he was allowed to present witnesses who testified that Defendant was at home when shooting occurred. Thus, no prejudice from defense counsel's failure to formally present alibi defense. (DELORT and CONNORS, concurring.)

People v. Williams, 2015 IL App (1st) 131359 (September 25, 2015) Cook Co., 6th Div. (DELORT) Affirmed.
Postconviction petition alleging ineffective assistance of counsel, in sequel to case heard on direct appeal, and on the merits, by First District Appellate Court, Illinois Supreme Court, and U.S. Supreme Court, in which Defendant was convicted of aggravated kidnapping, aggravated robbery, and aggravated criminal sexual assault. Defendant contended on appeal that report from Cellmark that forensic scientist referenced in her testimony and used in her analysis was testimonial, and thus claimed that his right to confrontation was violated. Defendant argues that 3 documents should have been presented on his behalf in appeal: Rule 11.1.2 of FBI Standard, 2008 manual from ASCLD/LAB, and transcript from a prior, unrelated proceeding of Defendant's in which a former manager of research and lab director at Cellmark testified. Speculation as to whether Justice Clarence Thomas would have changed his deciding vote if these documents had been presented, as the substance of that argument was made by appellate counsel, and amici briefs made reference to the same documents and arguments. (ROCHFORD and HOFFMAN, concurring.)

People v. Weinke, 2016 IL App (1st) 141196 (March 1, 2016) Cook Co., 2d Div. (HYMAN) Reversed and remanded.
Woman, age 77, was found at bottom of her basement stairs, and told police and paramedics that her son had pushed her over a first-floor railing, causing her to fall to the basement. Court granted State's immediate request to take evidence deposition of injured woman, although defense counsel had just entered case. Woman died 3 months later. Son's case went to bench trial 6 years later, during which evidence deposition was admitted into evidence. Allowing woman's evidence deposition to be taken on emergency basis was reversible error. Admitting evidence deposition at trial violated Defendant's constitutional rights to confront witnesses, as his counsel did not have adequate opportunity to cross-examine woman at deposition.(PIERCE and NEVILLE, concurring.)

CONTEMPT

People v. Geiger , 2015 IL App (3d) 130457 (April 17, 2015) Kankakee Co. (WRIGHT) Affirmed.
Defendant was age 15 at time of fatal shootings of two men, and then provided statement to police about events that preceded the shootings; Defendant was not charged for any offense directly related to murders. State later prosecuted Defendant for his refusal to testify at retrial, 9 years later, of person charged with murders. Court initially sentened Defendant to 20 years, but supreme court reversed and on remand trial court resentenced him to 10 years. Defendant originally refused to testify based on his fifth amendment right, but 5 years later Defendant explained he refused to testify because he could not remember the events of day of murders. Ten-year sentence was not grossly disproportionate to nature of contemptuous act when

considered in light of Defendant's previous criminal history. (O'BRIEN, concurring; LYTTON, dissenting.)

CONTROLLED SUBSTANCE

People v. Chatha, 2015 IL App (4th)130652 (May 29, 2015) McLean Co. (STEIGMANN) Reversed.
Defendant was convicted, after bench trial, of possession of controlled substance with intent to deliver 50 grams or more of substance containing synthetic cannabis. Police confidential source purchased commercially packaged product from convenience store Defendant owned. Source asked Defendant for a product which Defendant replied he did not have, but offered a similar product, "Bulldog Potpourri", which was stored underneath counter and was not displayed. Defendant denied that he knew product contained controlled substance, and said that his supplier described it as natural incense. Extent of State's proof was that Defendant knowingly possessed something that could be ingested for its intoxicating effects. Defendant's actions did not show conscious or willful ignorance as to product's legality. Evidence was insufficient to establish beyod a reasonable doubt that Defendant knew product contained synthetic cannabis. (KNECHT and HOLDER WHITE, concurring.)

People v. Maldonado, 2015 IL App (1st) 131874 (June 30, 2015) Cook Co., 2d Div. (PIERCE) Reversed.
Defendant was convicted, after bench trial, of three counts of unlawful use or possession of ammunition by a felon and possession of a controlled substance with intent to deliver heroin, and sentenced to 3 years intensive drug probation. State failed to prove beyond a reasonable doubt that Defendant had constructive possession of ammunition (found in kitchen of residence) and heroin (found inside a statue on nightstand). State failed to present direct evidence establishing Defendant's control over premises, and failed to present any evidence that Defendant had knowledge of contraband found in residence. Defendant was not present when search warrant was executed, and State presented no admissions by Defendant as to his residency. One receipt and two pieces of unopened mail with Defendant's name and address of location searched is insufficient evidence to establish proof of control. (NEVILLE and LIU, concurring.)

People v. Bush, 2015 IL App (5th) 130224 (July 28, 2015) St. Clair Co. (GOLDENHERSH) Affirmed.
Defendant was convicted, after jury trial, of possession of methamphetamine precuror and manufacturing material. Under Methamphetamine Control and Community Protection Act, Defendant committed two distinct acts of possession, as he possessed two separate items: precursor (pseudoephedrine) and manufacturing materials (lithium batteries, "Heet" isopropyl alcohol, and cold packs). Defendant's convictions and concurrent sentences were properly imposed. (STEWART and MOORE, concurring.)

DEFENSES

People v. Getter, 2015 IL App (1st) 121307 (January 6, 2015) Cook Co., 4th Div. (ELLIS) Reversed and remanded.
Defendant was charged with first-degree murder as to one victim, attempted murder and aggravated battery with a firearm as to another victim, and aggravated discharge of a firearm as to another victim. At trial, Defendant relied exclusively on self-defense theory. As to the first three charges, jury was instructed that State was required to prove beyond a reasonable doubt that Defendant was not justified in using force to defend himself; Defendant was acquitted on those charges. Jury was not so instructed as to fourth charge, and he was convicted of that charge. Plain error in failing to give self-defense instruction on aggravated discharge count, and defense counsel was ineffective for acquiescing in erroneous instructions. (FITZGERALD SMITH and EPSTEIN, concurring.)

People v. Lewis, 2015 IL App (1st) 122411 (February 27, 2015) Cook Co., 5th Div. (REYES) Affirmed.
Defendant was convicted, after jury trial, of first degree murder, and sentenced to 60 years. Defendant did not raise issue of self-defense at trial and State was not obliged to disprove that affirmative defense. Trial court properly refused self-defense instructions based on insufficient evidence. Court did not err in allowing State to introduce evidence and present argument that Defendant was hiding from the police. A jury could validly infer from evidence that Defendant knew he was a suspect and that he consciously avoided the police. (PALMER and McBRIDE, concurring.)

People v. Castellano, 2015 IL App (1st) 133874 (September 18, 2015) Cook Co., 5th Div. (GORDON) Affirmed.
Defendant, age 34 and mentally retarded, was convicted after bench trial of first-degree murder and 2 counts of aggravated battery, and sentenced to total of 32 years. On appeal, Defendant asks court to reduce his murder conviction to 2nd-degree murder, arguing that he proved by preponderance of evidence a mitigating factor, that he had actual, although unreasonable, belief in the need to act with deadly force to defend himself and another. A rational trier of fact could have reached the same conclusion, that Defendant failed to prove his claim of imperfect self-defense, and thus refused to reduce murder charge to second-degree murder. Defendant made conflicting statements, and trial court did not believe Defendant's testimony, and concluded that Defendant did not act out of any belief that self-defense was necessary.(REYES and McBRIDE, concurring.)

People v. Mpulamasaka, 2016 IL App (2d) 130703 (January 6, 2016) Lake Co. (BIRKETT) Reversed.
(Court opinion corrected 2/17/16.) Defendant was convicted, after jury trial, of aggravated criminal sexual assault, and sentenced to 12 years. State failed to disprove defense of consent by the victim, who testified that she held hands with Defendant and guided his hand to her thigh. Evidence was sufficient to raise affirmative defense of consent. There was no evidence that victim was confused during cross-examination, or that she lacked capacity to understand defense counsel's questions or recall events. By telling jury that they should ignore victim's cross-examination testimony because it was not "her own words", the State undermined Defendant's right to fair trial. Prosecutor committed prosecutorial misconduct, which severly prejudiced Defendant's case, when he sat in witness stand while making closing and rebuttal argument about victim's courage in testifying, and then commented on Defendant's "credibility", although Defendant did not testify. (HUTCHINSON, concurring; BURKE, specially concurring.)

People v. Orasco, 2016 IL App (3d) 120633 (April 14, 2016) Will Co. (SCHMIDT) Affirmed.
(Court opinion corrected 4/18/16.) Defendant was convicted, after jury trial, of 3 first-degree murder counts, which merged together, and aggravated battery which merged with attempted first degree murder. Jury was instructed on accountability but not on affirmative defense of compulsion. No ineffective assistance of counsel from defense counsel never tendering an instruction on compulsion. Evidence at trial was insufficient to support jury instruction on compulsion; evidence did not establish that Defendant committed acts constituting any of his offenses under threat of great bodily harm or death; and any potential compulsion arose from fault of Defendant; Void sentence rule has been abolished, and thus, the State may not directly attack the trial court's sentencing order.(HOLDRIDGE and LYTTON concurring.),

DISCOVERY

People v. DiCosola, 2015 IL App (2d) 140523 (January 9, 2015) Du Page Co. (SCHOSTOK) Affirmed.
Court properly entered summary judgment in favor of Attorney General's complaint against Defendant for his failure to comply with investigative subpoena issued by AG per Sections 3 and 4 of Consumer Fraud Act. Defendant, who is not licensed to practice law in any state, sold instructional DVDs, held seminars, and provided consultations on bankruptcy and foreclosure laws. Defendant was required to appear in response to subpoena, and could at that time invoke his fifth amendment right against self-incrimination. Given no evidence that AG is aiding or participating in any criminal prosecution of Defendant, fifth amendment does not provide any basis for noncompliance with subpoena. (JORGENSEN and BIRKETT, concurring.)

People v. Olsen, 2015 IL App (2d) 140267 (June 5, 2015) DeKalb Co. (SCHOSTOK) Reversed and remanded.
Defendant was charged with two counts of DUI. Section 30 of State Police Act, which requires that police cars be equipped with video recording device to record traffic stops. Court abused its discretion in suppressing officer's testimony about field sobriety tests as a sanction for officer's failure to capture field sobriety tests on video. State did not commit a discovery violation, as State turned over the video, and as Section 30 of Act is directory, and does not provide remedy for noncompliance. (JORGENSEN and BIRKETT, concurring.)

People v. Moises, 2015 ILApp(3d) 140577 (Will County)
Reversed & remanded
In DUI trial court granted defense motion for sanctions after dash video revealed officer elected to conduct FSTs outside the view of the lens. The video was tendered in discovery. There can be no discovery violation and hence no sanction when the requested item does not and never did exist. The holding in Kladis, is there for inapplicable. "[t]here is nothing in this record to support any inference or suggestion that the police or the prosecution intentionally or inadvertently destroyed any preexisting discoverable evidence."

People v. Forrest, 2015 IL App (4th) 130621 (October 6, 2015) McLean Co. (STEIGMANN) Affirmed.
Defendant was convicted, after jury trial, of aggravated battery, criminal damage to property,and mob action. Court abused its discretion by imposing the most onerous sanction of excluding defense witness' testimony as sanction for Defendant failing to disclose witness until day of trial. Court is required to consider available alternative sanctions, materiality of evidence, prejudice, and bad faith, to exercise sound discretion. Imposition of sanctions was harmless error, and late disclosure was not ineffective assistance of counsel, as there was not a reasonable probability that Defendant would have been acquitted had witness' testimony been admitted.(KNECHT and APPLETON, concurring.)

People v. Moravec, 2015 IL App (1st) 133869 (November 3, 2015) Cook Co., 2d Div. (SIMON) Affirmed.
Defendant was charged with one count of aggravated DUI. Court properly granted Defendant's motion in limine and for sanctions to limit State's proof at trial (barring testimony of officers about facts and circumstances of stop, investigation, and arrest) because State failed to produce POD (police observational device) camera video of those events, despite Defendant's timely request for videos. Sanction imposed was within bounds of court's discretion for this discovery violation. (PIERCE and HYMAN, concurring.)

People v. Carballido, 2015 IL App (2d) 140760 (December 15, 2015) Lake Co. (JORGENSEN) Reversed and remanded.
Defendant was convicted, after jury trial, of first-degree murder, under accountability theory. Defendant, age 17 at time of offense, drove a car to and from scene where 21-year-old member of gang allegedly shot and killed 15-year-old whom shooter believed associated with a rival gang. Court erred in third-stage denial of Defendant's postconviction petition. It is beyond reasonable dispute that Defendant made substantial showing of a constitutional violation, as State failed to disclose field notes of an investigating officer. If defense had been given access to notes prior to trial, it could have impeached officer on central issue of Defendant's foreknowledge of gun used in the offense. Defendant's knowledge of the gun was critical to State's shared-intent theory of accountability.(McLAREN and BIRKETT, concurring.)

People v. Gray, 2016 IL App (2d) 140002 (March 2, 2016) DuPage Co. (McLAREN) Affirmed. (Court opinion corrected 3/2/16.) Court properly entered second-stage dismissal of Defendant's petition for relief under Post-Conviction Hearing Act from his conviction, based on negotiated guilty plea, of possession of cocaine with intent to deliver. State is not required to disclose potential impeachment evidence before a defendant pleads guilty. Alleged misdeeds of 3 police officers did not involve facts of Defendant's case or any conduct in which Defendant participated; thus, State's failure to disclose to Defendant that these officers had been charged with criminal misconduct,did not invalidate his guilty plea. (SCHOSTOK and ZENOFF, concurring.)

DOUBLE JEOPARDY

People v. Jackson, 2015 IL App (1st) 123695 (July 27, 2015) Cook Co., 1st Div. (HARRIS) Affirmed and remanded.
Defendant was found guilty but mentally ill, after bench trial, of first degree murder. Appellate court then reversed circuit court and remanded for new trial, holding that court adopted prosecutorial role when questioning defense expert and by relying on matters based on private knowledge of court outside the record. Retrial of Defendant for first degree murder does not offend prohibition against double jeopardy because judgment in initial trial was reversed due to trial errors, not evidentiary insufficiency. Collateral estoppel does not apply due to absence of different causes of action and a final adjudication on merits. (DELORT and CUNNINGHAM, concurring.)

People v. Espinoza, 2015 IL 118218 (December 3, 2015) Will Co. (THOMAS) Appellate court affirmed.
A charging instrument that identifies the victim of a nonsexual offense only as "a minor" is insufficient pursuant to Section 111-3 of Code of Criminal Procedure. Courts properly dismissed criminal complaints based on insufficiency of those charging instruments.Under Section 111-3,

State was required to identify the victims, and as State failed to amend charging instruments, and refused to identify victims by their names, initials, or any description of than "a minor", to strictly comply with Section 111-3 prior to trial, courts properly dismissed them. (GARMAN, FREEMAN, KILBRIDE, KARMEIER, BURKE, and THEIS, concurring.)

People v. Meuris, 2016 IL App (2d) 140194 (March 30, 2016) Boone Co. (BURKE) Reversed and remanded.
Defendant was convicted of failure to stop after an accident involving personal injury or death. Defendant, who was driving a semi, admitted that he fell asleep and traveled off roadway, but stated that he thought he hit a road sign or mile marker. Defendant had struck a person standing next to driver's side of pickup truck stopped on shoulder, who died from injuries. The charge required the State to prove that Defendant knew that he was in an accident with another person. No double jeopardy impediment to new trial, as Defendant does not argue that evidence was insufficient.(SCHOSTOK and HUDSON, concurring.)

DUE PROCESS

People v. Stapinski, 2015 IL 118278 (October 8, 2015) Will Co. (BURKE) Appellate court reversed; circuit court affirmed; remanded.
Defendant was indicted on a single count of unlawful possession of a controlled substance (ketamine) with intent to deliver. Defendant's substantive due process rights were violated when State breached cooperation agreement police sergeant entered into with Defendant. Court properly granted Defendant's motion to dismiss indictment. Cooperation agreements, where State agrees to limit a prosecution in some manner in consideration for Defendant's cooperation, are construed under contract principles, and construed strictly against the government. Whether cooperation agreement was "valid" in sense that it was approved by State's Attorney is irrelevant. Defendant relied upon cooperation agreement and incriminated himself in the process of fulfilling his obligations under the agreement. Thus, Defendant suffered prejudicial violation of due process rights when, more than a year after Defendant was detained and after he had fulfilled his obligations, by assisting in undercover efforts leading to arrests, he was charged with possession of ketamine. (FREEMAN, THOMAS, KILBRIDE, KARMEIER, and THEIS, concurring.)

DUI

People v. Morales, 2015 IL App (1st) 131207 (January 6, 2015) Cook Co. (FITZGERALD SMITH) Reversed.
Court improperly rescinded DUI Defendant's statutory summary suspension of his driver's license. No due process violation where Defendant was provided notice and a hearing. Defendant was served with notice on date he was arrested for DUI, and had opportunity to present any objections at court hearing. That a letter "Notice of Summary Suspension" from Secretary of State arrived by mail when his suspension had already begun was irrelevant, as it was merely a confirmation that his license was suspended, and did not impact his procedural due process rights. (HOWSE and EPSTEIN, concurring.)

People v. Bozarth, 2015 IL App (5th) 130147 (January 26, 2015) Wayne Co. (STEWART) Reversed.
Defendant was charged with two counts of DUI, and convicted of one count after bench trial. Court erred in denying Defendant's motion to quash arrest and suppress evidence. Defendant was seized within meaning of 4th Amendment, as officer testified he had his gun drawn when he exited his vehicle to make contact with Defendant, which is show of authority. Officer's testimony establishes that he did not have any suspicion of criminal activity when he first began following Defendant's vehicle, and that he followed vehicle onto private drive to see if anything "might happen". Officer could not articulate any facts to support reasonable suspicion that Defendant had committed, or was about to commit, a crime that would justify investigatory stop.(GOLDENHERSH, concurring; WELCH, dissenting.)

People v. Taiwo, 2015 IL App (3d) 140105 (April 3, 2015) Will Co. (WRIGHT) Affirmed.
Defendant was convicted, after bench trial, of DUI, improper lane usage, and failure to notify authorities of an accident. Court properly allowed State's motion for directed finding pertaining to existence of probable cause and duration of traffic stop. Court properly allowed State's motion for directed finding pertaining to existence of probable cause and duration of this traffic stop. Thus, court properly denied motion to suppress, as court found that officer first observed a traffic violation before initiating the stop. In ruling on motion to quash arrest or suppress evidence, lawfulness of traffic stop,must be measured by trial judge, rather than dictated by officer's reasoning formulated under exigent circumstances. Circumstantial evidence supports finding that Defendant was in actual, physical control of vehicle before driver of another vehicle picked her up and offered her a ride home. Evidence was sufficient to establish Defendant's guilt of DUI beyond a reasonable doubt. (LYTTON and SCHMIDT, concurring.)

People v. Lake, 2015 IL App (3d) 140031 (April 8, 2015) Will Co. (SCHMIDT) Affirmed in part and vacated in part.
Defendant pled guilty to aggravated DUI; he struck a horse which his girlfriend was riding, causing horse to buck and girlfriend died from her injuries; another woman riding horse was

seriously injured. Sentence of nine years was not disproportionate to nature of offense. Defendant had been driving about 46 mph on a dark road with no artificial lighting in early morning hours. Defendant had 2 prior DUI convictions. No evidence that court failed to consider mitigating factors. Presentence incarceration credit applies against eligible fines.(McDADE and WRIGHT, concurring.)

People v. Scarbrough, 2015 IL App (3d) 130426 (May 13, 2015) Will Co. (McDADE) Affirmed.
Defendant entered blind plea of guilty to driving while license revoked, and to obstructing identification. Court properly found that Defendant was not eligible for court supervision, as his revocation was related to a DUI charge. During plea agreement negotiations, it was established that Defendant had been convicted of driving while license revoked in connection with DUI charge, and thus Defendant was required to serve minimum 30 days in jail. Bond forfeiture for DUI is equivalent of conviction for DUI for purposes of Driver Licensing Law. (CARTER and WRIGHT, concurring.)

People v. Moreno, 2015 IL App (2d) 130581 (June 17, 2015) DuPage Co. (HUTCHINSON) Affirmed.
Defendant was convicted of aggravated DUI resulting in a death, aggravated failure to report accident resulting in death, and disorderly conduct. As Defendant made no attempt to report accident, his argument that he was physically unable to go to a police station to make a report, because he was being detained by police, fails. Evidence showed that Defendant knew of accident yet made no attempt to report his involvement, even after being arrested for obstruction of justice and confronted with knowledge of victim's death. (ZENOFF and SPENCE, concurring.)

People v. Gutierrez, 2015 IL App (3d) 140194 (July 20, 2015) Will Co. (HOLDRIDGE) Affirmed.
Defendant police officer was involved in traffic accident while off duty, and arrested for DUI; he took PBT (preliminary breath test) but refused any other testing. Defendant's drivers license was then summarily suspended. PBT results were not inadmissible under fifth amendment, as it protects against use of testimonial evidence, not physical evidence; and it prevents introduction of compelled testimony at criminal proceeds, rather than civil proceedings such as SSS proceedings. PBT statute does not require affirmative consent. Officer is not required to inform suspect of his right to refuse PBT testing. Court properly admitted PBT results, and thus court properly denied Defendant's petition to rescind SSS, as PBT showed 0.249 BAC. (CARTER and WRIGHT, concurring.)

People v. Stutzman, 2015 IL App (4th) 130889 (August 4, 2015) Livingston Co. (STEIGMANN) Affirmed in part and vacated in part; remanded with directions.
Defendant entered guilty plea, pursuant to negotiated guilty plea agreement, to reckless homicide and aggravated DUI. Defendants' convictions violated the one-act, one-crime doctrine. Reckless

homicide conviction is vacated as it was based on same physical act as aggravated DUI conviction; at moment of his passenger's death (who fell from Jeep, which had no doors, as he attempted left turn), he drove while intoxicated.(HOLDER WHITE and APPLETON, concurring.)

People v. Torruella, 2015 IL App (2d) 141001 (August 17, 2015) DuPage Co. (ZENOFF) Affirmed.
Defendant was convicted, after bench trial, of driving with BAC of 0.08 or more. Court properly admitted as a business record a report of accuracy checks performed on instrument used to administer breath test. State had filed motion in limine seeking admission of accuracy checks as business records, with attached verified certification signed by recordkeeper. That certification was dated two years after records were created did not render records inadmissible, as certification indicated that records were created at or near time of matters set forth in records, which were dated in months of and after Defendant's arrest. Officer's testimony that logbook and printouts of automated accuracy checks were retained in regular course of business was sufficient to lay foundation for admission of printouts. Court properly sustained State's objections to testimony of expert, who was qualified in areas of Intox EC/IR machines and standardized field sobriety tests (FSTs), about accuracy of Defendant's breath test result in light of his performance on FSTs. (SCHOSTOK and SPENCE, concurring.)

People v. Smith, 2015 IL App (1st) 122306 (August 21, 2015) Cook Co., 6th Div. (ROCHFORD) Reversed.
(Modified upon denial of rehearing 11/13/15.) Jury convicted Defendant of driving with alcohol concentration of 0.08 or more. State failed to establish foundational requirement that his Breathalyzer test results were certified as accurate at least once within 62 days prior to his test. Although electronic certification contains raw date from accuracy tests conducted electronically by State Police, it provides no interpretation of that data, so it cannot be determined whether Breathalyzer test performed within accuracy tolerance and was certified as accurate for that time period. (HOFFMAN and HALL, concurring.)

People v. Moises, 2015 IL App (3d) 140577 (August 24, 2015) Will Co. (SCHMIDT) Reversed and remanded.
Defendant was charged with misdemeanor DUI and several traffic offenses. State turned over squad car video recording of traffic stop, which did not capture Defendant's field sobriety tests because arresting officer directed Defendant to perform tests in area outside view of camera. Court granted Defendant's motion for sanctions, on grounds that officer's direction resulted in no video being created, and barred testimony about Defendant's field sobriety tests. As no discovery violation occurred, because State neither destroyed nor withheld squad car video from Defendant, court erred in granting motion for sanctions.(LYTTON, specially concurring; HOLDRIDGE, dissenting.)

People v. Way, 2015 IL App (5th) 130096 (September 25, 2015) St. Clair Co. (MOORE) Reversed and remanded.
Defendant was convicted, after stipulated bench trial, of aggravated DUI. Parties stipulated that accident resulted in great bodily harm to a passenger in her vehicle, and to driver of other vehicle with which she collided. Parties stipulated that Defendant had, in her system, THC metabolite, from use of cannabis, and that Defendant's vehicle crossed into other driver's lane. Court erred in denying Defendant the right to present a defense, as she was not allowed to contest the "proximate cause" element of her charge. Defendant should have been allowed to present physician's testimony that Defendant has low blood pressure, and that it is possible that loss of consciousness right before accident was caused by this condition, for court to decide whether Defendant's sudden illiness was sole and proximate cause of accident.(STEWART and SCHWARM, concurring.)

People v. Phillips, 2015 IL App (1st) 131147 (October 20, 2015) Cook Co., 2d Div. (HYMAN) Affirmed.
Defendant was convicted of DUI. State presented sufficient evidence from a credible police officer that Defendant emitted a strong odor of alcohol, exhibited slightly slurred speech, had bloodshot eyes, and performed poorly on field-sobriety tests. Appellate court declines to reweigh evidence against Defendant; weaknesses in evidence noted by Defendant do not lead appellate court to conclude that evidence of guilt was so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of Defendant's guilt. (NEVILLE and SIMON, concurring.)

People v. Blakey, 2015 IL App (3d) 130719 (November 25, 2015) Henry Co. (McDADE) Affirmed.
Defendant, then age 19, was convicted of aggravated DUI and sentenced to 12 years. Three back-seat passengers died in crash. Admissions of his front-seat passenger's out-of-court statement (in the hospital, to the police) that he heard a back seat passenger yell to the driver that he shouldn't be doing that, in the moments before the crash, did not meet requirements for admissibility as substantive evidence, and was improperly admitted for purposes of impeachment. State's case was not affirmatively damaged by passenger's professed lack of memory as to that statement. Error was harmless, as Defendant admitted to police that he was "huffing" from a can of compressed air in the vehicle while driving. (LYTTON and O'BRIEN, concurring.)

People v. Wuckert, 2015 IL App (2d) 150058 (December 10, 2015) Kane Co. (BURKE) Reversed and remanded.
Defendant was charged with driving under the influence of intoxicating compounds (DUI). Court granted Defendant's motion to suppress evidence that was allegedly the product of an illegal arrest. Court then allowed results of urine test that hospital personnel administered to Defendant shortly after his arrest; court ultimately suppressed the test results. Although Defendant was arrested illegally, the test results were not tainted by the arrest, as they were the

product of actions by hospital employees not acting at instigation or prompting of the police. Fourth amendment does not apply to a search or seizure effected by a private individual not acting as agent of government or with participation or knowledge of any governmental official. Thus, court erred in suppressing results of urine test done by hospital personnel.(HUTCHINSON and ZENOFF, concurring.)

People v. Harrison, 2016 IL App (5th) 150048 (February 18, 2016) St. Clair Co. (SCHWARM) Affirmed.
Defendant refused to submit to breath test after his DUI arrest, where he hit a motorcyclist who sustained massive leg injury resulting in partial amputation of leg. Defendant was taken to hospital where samples of his blood were drawn without warrant or consent. Test results shown BAC over twice the legal limit of 0.08. Court properly denied Defendant's motion to suppress test results, as good-faith exception to exclusionary rule was applicable. At time of Defendant's arrest, binding precedent of Illinois Supreme Court's 2005 Jones decision held that Section 11-501.2(c)(2) of Vehicle Code clearly allowed for warrantless, nonconsensual blood draws in all DUI cases. Section 11-5-1.2(c)(2) is constitutional as written, and Defendant's blood was drawn solely on basis of Jones court's interpretation of statute.(WELCH and GOLDENHERSH, concurring.)

EVIDENCE (corpus)

People v. Lawson, 2015 IL App (2d) 140604 (March 3, 2015) Kane Co. (SCHOSTOK) Affirmed.
Defendant was convicted of two counts of forgery, for letter of diminished capacity purportedly written by treating psychologist. Letter was provided to financial adviser to facilitate transfer of assets from trust of Defendant's father to Defendant's mother. Defendant admitted to psychologist, who had refused to write such letter, that she had written the letter with his signature. Evidence was sufficient to show that a reasonable person might be deceived into accepting the document as genuine; letter was presented with the name of psychologist who had evaluated Defendant's father, and it was on letterhead from nursing home where he had stayed. Although document was rejected by financial adviser, it had the potential to have a legal effect. Intent to defraud can exist even though funds are sought on behalf of another person. (ZENOFF and BURKE, concurring.)

People v. Gonzalez, 2015 IL App (1st) 132452 (June 30, 2015) Cook Co., 2d Div. (PIERCE) Reversed.
After joint bench trial with 3 co-defendants, Defendant was found guilty of reckless conduct, based on his act of holding a brick and glass bottle in his hand while yelling gang slogans to passing vehicles and pedestrians.State failed to prove Defendant guilty of reckless conduct

beyond a reasonable doubt. Police officer was the only witness who testified that he saw "the defendants" throwing bricks, but also unequivocally testified that he did not see any of "the defendants", including this Defendant, throwing bricks. Where multiple Defendants are tried simultaneously, State is not relieved of its burden to make record clearly establishing alleged conduct of each individual Defendant beyond a reasonable doubt. (SIMON and LIU, concurring.)

People v. Rankin, 2015 IL App (1st) 133409 (July 16, 2015) Cook Co., 6th Div. (HOFFMAN) Reversedin part and vacated in part; remanded withinstructions.
Defendant was convicted, after bench trial, of residential burglary and sentenced to 84 months imprisonment and then 3 years mandatory supervised release (MSR), with fines and costs of $549 and $450 fee for his court-appointed defense counsel. Evidence of record is so unsatisfactory that it creates reasonable doubt of Defendant's guilt. Remanded for court to conduct evidentiary hearing to consider Defendant's financial circumstance and ability to pay for costs of court-appointed counsel.(HALL and LAMPKIN, concurring.)

People v. Shaw, 2015 IL App (1st) 123157 (September 17, 2015) Cook Co., 2d Div. (HYMAN) Reversed.
Court acquitted Defendant of armed robbery, noting that officers did not recover the weapon or the funds, but found Defendant guilty of lesser included offense of robbery. Evidence at trial was insufficient to convict Defendant, where numerous aspects of victim's testimony contained material inconsistencies, including accounts contrary to evidence from surveillance camera and testimony from police officers. Viewed in their entirety, impeachments of victim show that victim's account at trial repeatedly strayed from what he told police and from surveillance videos. (NEVILLE and SIMON, concurring.)

People v. Klein , 2015 Il App (3d) 130052 (September 28, 2015) Will Co. (WRIGHT) Affirmed. (Modified upon denial of rehearing 9/28/15.) Defendant, an in-home day care provider, was convicted, after bench trial, of aggravated battery of a child, as 7-month-old infant in her care suffered brain injury. Treating physicians concluded that infant's injuries were non-accidental and resulted from significant amount of force. There were several injuries to multiple planes of infant's body that could not have been caused by infant himself. Evidence was sufficient to prove Defendant guilty beyond a reasonable doubt. Trial judge's finding of guilty, standing alone, does not support view that he bore any animosity, hostility, or distrust toward Defendant. Thus, court properly denied 2 motions for substitution for cause. (CARTER and LYTTON, concurring.)

People v. Garcia, 2015 IL App (2d) 131234 (October 20, 2015) Kane Co. (JORGENSEN) Affirmed.
Defendant was convicted, after jury trial, of threatening a public official, and sentenced to 54 months in prison. Conviction based on evidence that Defendant made death threats against judge after she had found him in contempt of court. Although Defendant did not make threats in

Judge's presence, he made them in presence of police and sheriff's department personnel, and judge was made aware of threats, and was thus sufficient within meaning of Section 12-9 of Code. Jury could reasonably infer that it was a practical certainty that threats, made in presence of police and sheriff's department, would be brought to judge's attention, thus sufficient to meet requirement that Defendant acted knowingly. (McLAREN and HUDSON, concurring.)

People v. Ford, 2015 IL App (3d) 130810 (October 28, 2015) Henry Co. (CARTER) Affirmed.
Defendant, then age 19, was convicted of 2 counts of aggravated battery and 2 counts of battery, sentenced to 3 years on first aggravated battery charge but not sentenced on remaining charges. Victim, age 15, gave consent for Defendant to place him in a choke hold in exchange for cigarettes. While in choke hold, victim gave signal for Defendant to release him, but Defendant did not, and victim lost consciousness, had a seizure, and awoke with a nosebleed. Consent is not a valid defense to aggravated battery. Evidence was sufficient to reasonably conclude without need for expert medical testimony that Defendant's choke hold caused victim's nosebleed. Factfinder could reasonably infer that Defendant knowingly caused victim to lose consciousness, which is a form of bodily harm. (McDADE and LYTTON, concurring.)

People v. Abrams, 2015 IL App (1st) 133746 (December 22, 2015) Cook Co., 2d Div. (HYMAN) Affirmed.
Defendant, then age 68, was convicted of theft of $1.8 million from his employer/business partner's business properties, and sentenced to 12 years. Loan applications on partner's residence were irrelevant to proving theft of business income. Partner's residence was neither part of the business nor did it generate income.Jury heard testimony as to partner's income and properties, and Defendant cross-examined him based on his income tax returns and business documents. Any additional documents, even were they relevant, would have been cumulative. Court properly considered aggravating and mitigating factors, and sentence was within range for Class 1 felony. Court's isolated remark "ask your next question" was a direction to defense counsel to proceed and was not prejudicial.(NEVILLE and SIMON, concurring.)

People v. Netisingha, 2015 IL App (1st) 133520 (December 29, 2015) Cook Co., 2d Div. (SIMON) Reversed.
Defendant was convicted, after bench trial, of theft and other financial crimes for allegedly buying merchandise he was led to believe was stolen and then selling it online. Property obtained by Defendant from undercover police investigator was not stolen, and thus a necessary element of the theft offense is absent. As convictions for theft are vacated, conviction for operating a continuing financial crime enterprise, which is based on existence of theft convictions, must also be vacated. Defendant's conviction for online sale of stolen property, because State did not prove that property was gained by unlawful means. (PIERCE and HYMAN, concurring.)

EVIDENCE (science)

People v. Tademy, 2015 IL App (3d) 120741 (February 13, 2015) Will Co. (O'BRIEN) Affirmed in part and vacated in part.
Defendant was convicted, after jury trial, of attempted first degree murder, aggravated battery with a firearm, and aggravated battery of a child for shooting his 12-year-old son in the head. Jury heard two expert opinions reaching opposite conclusions, and lay testimony as to Defendant's actions, and was free to accept opinion of State's expert that Defendant appreciated criminality of his actions. Jury's finding that Defendant was sane was not against manifest weight of evidence. Jail psychiatrist's diagnosis of adjustment disorder with depressed mood was not offered for truth of matter asserted, but to show facts and conclusions underlying experts' opinions, and thus experts were properly allowed to testify as to that diagnosis.State's reference to diagnosis in argument was not plain error, as evidence was not closely balanced. Two aggravated battery convictions are vacated under one-act, one-crime doctrine. (HOLDRIDGE and WRIGHT, concurring.)

People v. Jones, 2015 IL App (1st) 121016 (March 31, 2015) Cook Co., 3d Div. (PUCINSKI) Reversed and remanded.
Defendant was convicted, after jury trial, of first-degree murder based on circumstantial evidence and expert opinion testimony of firearm/toolmark examiner who identified bullet found by victim as being fired from Defendant's gun. Court erred in admitting testimony of firearm/toolmark examiner, as expert's testimony failed minimum foundational requirements for general expert testimony. Expert testified that he found "sufficient agreement" but did not testify to any facts that formed bases or reasons for this ultimate opinion that bullet matched Defendant's gun. Expert's opinion testimony substantially prejudiced Defendant, as it essentially placed murder weapon in Defendant's hands.(HYMAN, concurring; MASON, dissenting.)

People v. Navarro, 2015 IL App (1st) 131550 (September 8, 2015) Cook Co., 2d Div. (HYMAN) Affirmed.
Court properly denied Defendant's pro se "motion for ballistic testing" under Section 116-3 of Code of Criminal Procedure. Integrated Ballistic Identification System (IBIS) testing of bullet shells would not materially advance Defendant's claim of actual innocence due to State's strong evidence, including 4 witnesses identifying Defendant as the shooter. Defendant cannot establish that IBIS search has scientific potential to produce new, noncumulative evidence materially relevant to actual innocence as required by Section 116-3 of Code. (PUCINSKI and LAVIN, concurring.)

People v. Lerma, 2016 IL 118496 (January 22, 2016) Cook Co. (THOMAS) Appellate court affirmed.
Victim was shot to death while sitting on the unlit front steps of his home. Victim, immediately after being shot, told family members it was Defendant who shot him, and this eyewitness

identification was admitted into evidence under excited utterance exception to hearsay rule. The other eyewitness identification was by female companion who was sitting with victim on the steps when a man dressed all in black approached the house and began shooting at them; companion admitted that she had seen Defendant only once or twice before shooting, and did not know him. Qualified expert would present relevant and probative testimony directly addressing State's only evidence against Defendant. Court's reasons for denying expert's testimony were expressly contradicted by expert's report and inconsistent with actual facts. Under these specific facts, trial court abused its discretion when it denied Defendant's motion to allow expert testimony as to reliability of eyewitness identifications.(GARMAN, FREEMAN, KILBRIDE, KARMEIER, BURKE, and THEIS, concurring.)

People v. Pike, 2016 IL App (1st) 122626 (January 27, 2016) Cook Co., 3d Div. (PUCINSKI) Affirmed.
(Court opinion corrected 1/29/16.) The admission of DNA expert testimony of a 50% probability of inclusion for a random person in the population as a possible contributor to a mixed DNA profile was error because it was irrelevant, as it did not tend to make the issue of Defendant's identification more likely than not. The admission of this evidence was not plain error, as error was not serious and evidence was not closely balanced as both victims identified Defendant. Court is not required to recite all counts against a defendant in admonishment of a waiver of the right to counsel pursuant to Rule 401(a). Admonishment substantially complies with Rule 401(a) where court states nature of charge and possible maximum punishment, even though it did not recite every count. (LAVIN, concurring; HYMAN, dissenting.)

EVIDENCE (technology)

People v. Sanders, 2015 IL App (4th) 130881 (June 5, 2015) McLean Co. (KNECHT) Affirmed. Defendant was convicted, after jury trial, of two counts of criminal sexual assault, alleging that he knew the victim was unable to give consent due to intoxication. Defendant was a a bartender who had been providing victim with free alcohol all night. As nothing in record indicates Defendant knew what victim was saying in her text messages to bouncer, content of messages was irrelevant, and court allowed bouncer to testify as to victim's cognitive abilities during messaging. Court properly denied Defendant's Batson challenge, and did not err by failing to sua sponte address factors other than deciding that no pattern of discrimination had been shown. Court properly prohibited defense counsel from introducing content of sexually suggestive text messages victim sent to bouncer on night of offense. (STEIGMANN and APPLETON, concurring.)

People v. Macias, 2015 IL App (1st) 132039 (June 26, 2015) Cook Co., 5th Div. (McBRIDE) Affirmed.
Defendant was convicted, after jury trial, of first degree murder of one victim, and of attempted murder and aggravated battery of another victim, and sentenced to total 75 years. Court did not err in admitting MySpace photographs, as Defendant was not identified as a suspect based on MySpace photos, and presence of caption does not impact Defendant's case so as to cause prejudice to Defendant. Photos were relevant to show course of investigation, which led to co-Defendant, who later implicated Defendant. (PALMER and REYES, concurring.)

EVIDENCE (testimony)

People v. Mister, 2015 IL App (4th) 130180 (January 23, 2015) Champaign Co. (KNECHT) Affirmed in part and vacated in part; remanded with directions.
Defendant was convicted, after jury trial, of armed robbery (while carrying a firearm) of University of Illinois student when he returned to campus after winning $23,000 at casino in Peoria, and was sentenced to 30 years. A lay witness may testify as to identity of a person depicted in a surveillance video if there is some basis for concluding the witness is more likely to correctly identify the person from the videotape than is the jury. Rational trier of fact could have found victim viewed Defendant under circumstances permitting positive identification, although he did not identify him in courtroom. State presented sufficient evidence to allow jury to find Defendant was the person who committed armed robbery of victim. (POPE and TURNER, concurring.)

People v. Betance-Lopez, 2015 IL App (2d) 130521 (January 28, 2015) Kane Co. (ZENOFF) Affirmed.
(Court opinion corrected 1/29/15.) Defendant was convicted, after bench trial, of two counts of predatory criminal sexual assault of a child and one count of aggravated criminal sexual abuse. Court properly relied on written transcript, in which English portion of interview of Defendant by police officer was transcribed verbatim, and Spanish portion of interview was translated into English, as substantive evidence, although audio recording of interview, including live translation by DCFS investigator, was played for court. It would have been impractical or even impossible for court to rely on Spanish portions of recording as substantive evidence. State proved Defendant's guilt beyond a reasonable doubt. (JORGENSEN and BIRKETT, concurring.)

People v. Wright, 2015 IL App (1st) 123496 (May 21, 2015) Cook Co., 4th Div. (COBBS) Reversed and remanded with instructions.
Defendant was convicted, after jury trial, of four counts of armed robbery while armed with a firearm. At hearing on record outside presence of jury, with codefendant present, codefendant invoked his right not to testify under fifth amendment, and he was thus unavailable to testify for purposes of Rule 804(b)(3). However, Defendant failed to establish conditions for admissibility under Rule 804(b)(3) and thus court properly excluded codefendant's statement. Evidence was

sufficient to find Defendant guilty of armed robbery with a firearm beyond a reasonable doubt. Even though witnesses viewed only the handle of the gun, their testimonies as to their having viewed guns before, and ample opportunity to view weapon at close distance, was sufficient identification.(FITZGERALD SMITH and ELLIS, concurring.)

People v. McLaurin, People v. McLaurin (May 4, 2015) Cook Co., 1st Div. (CUNNINGHAM) Affirmed.
Defendant was convicted, after second jury trial, of first-degree murder. Witness' prior inconsistent statements contained in his written statement and grand jury testimony were properly admitted as substantive evidence. Written statement, signed by witness, described events of shooting to which he was eyewitness. Statements that phrase "you stretched buddy" meant that Defendant killed the victim, in witness' prior written statement and grand jury testimony, met requirements of Rule 701, and thus were properly admitted. Other statements, which did not describe any misconduct or criminal acts committed by Defendant but only witness' observations that he had seen Defendant in possession of some guns at some unknown time, were not other-crimes evidence.(DELORT and HARRIS, concurring.)

People v. Moore, 2015 IL App (1st) 141451 (November 24, 2015) Cook Co., 2d Div. (PIERCE) Affirmed in part and vacated in part.
(Court opinion corrected 12/3/15.) Defendant was convicted, after bench trial, of armed robbery with a handgun. Multiple suspects in same lineup does not render lineup impermissibly suggestive. Witness, who positively identified Defendant in lineup 8 days after robbery had ample opportunity to view Defendant, and paid much attention to details. Thus, witness' identification testimony was reliable. Court erred in imposing $150 public defender fee without holding sufficient hearing to determine Defendant's financial circumstances and ability to pay.(NEVILLE and SIMON, concurring.)

People v. Blakey, 2015 IL App (3d) 130719 (November 25, 2015) Henry Co. (McDADE) Affirmed.
Defendant, then age 19, was convicted of aggravated DUI and sentenced to 12 years. Three back-seat passengers died in crash. Admissions of his front-seat passenger's out-of-court statement (in the hospital, to the police) that he heard a back seat passenger yell to the driver that he shouldn't be doing that, in the moments before the crash, did not meet requirements for admissibility as substantive evidence, and was improperly admitted for purposes of impeachment. State's case was not affirmatively damaged by passenger's professed lack of memory as to that statement. Error was harmless, as Defendant admitted to police that he was "huffing" from a can of compressed air in the vehicle while driving. (LYTTON and O'BRIEN, concurring.)

People v. Cacini, 2015 IL App (1st) 130135 (December 11, 2015) Cook Co., 5th Div. (LAMPKIN) Reversed and remanded.
Defendant was convicted, after jury trial, of attempted first degree murder of police officer and aggravated battery of another police officer. Court's failure to instruct jury on State's burden to disprove Defendant's justification for his use of force in self-defense was plain error. Court did not abuse its discretion in concluding after in camera inspection that confidential records of complaints against the arresting police officers were not admissible at trial or subject to disclosure. Court used proper review procedure and did not err in its decision as to remoteness and irrelevancy of information in OPS (Office of Professional Standards) files. As to 9 files of both officers that were not too remote in time, allegations of misconduct were completely distinct from present case, and all claims were unfounded or not sustained by sufficient evidence.(REYES and PALMER, concurring.)

People v. Williams, 2016 IL 118375 (January 22, 2016) Tazewell Co. (FREEMAN) Appellate court affirmed.
Two different interpretations of Section 408(a) of Illinois Controlled Substances Act, advanced by State and by defense, are both reasonable. Thus, Section 408(a) of the Act is ambiguous, and it is appropriate to invoke the rule of lenity. Section 408(a) of the Act applies only to offenses committed in violation of the Act, and cannot apply to double Defendant's enhanced Class X potential maximum sentence of 30 years.(GARMAN, THOMAS, KILBRIDE, KARMEIER, BURKE, and THEIS, concurring.)

People v. Thompson, 2016 IL 118667 (January 22, 2016) Hamilton Co. (BURKE) Appellate court reversed; circuit court affirmed.
(Correction 3/29/16 to opinion modified upon denial of rehearing 3/28/16.) Defendant was convicted of violating Methamphetamine Control and Community Protection Act, after jury trial at which court admitted lay opinion identification testimony of 4 witnesses, pursuant to Rule 701 of Illinois Rules of Evidence. Witnesses identified Defendant as the person depicted in surveillance video or still photos taken from crime scene, showing theft of anhydrous ammonia and tampering with equipment at ag supply facility. Opinion identification testimony is admissible under Rule 701 if the testimony is rationally based on perception of witness and testimony is helpful to clear understanding of witness's testimony or determination of a fact in issue. A showing of sustained contact, intimate familiarity, or special knowledge of the Defendant is not required. Lay identification testimony is admissible under these principles as long as its probative value outweighs any prejudice under Rule 403. (GARMAN, FREEMAN, THOMAS, KILBRIDE, KARMEIER, and THEIS, concurring.)

People v. Grant, 2016 IL App (3d) 140211 (January 29, 2016) Peoria Co. (CARTER) Reversed and remanded.
Defendant was convicted, after jury trial, of aggravated criminal sexual assault. Court erred in denying Defendant's motion for forensic testing, as Defendant satisfied each element of Section

116-3 of Code of Criminal Procedure, for posconviction motion for forensic testing. Defendant put the question of identity squarely at issue at trial, as he disputed being the person who committed the crime, and stated at trial that it was victim's brother who committed the crime. (O'BRIEN and McDADE, concurring.)

People v. Moore, 2016 IL App (1st) 133814 (February 18, 2016) Cook Co., 4th Div. (COBBS) Affirmed.
Defendant was convicted, after jury trial, of first degree murder and attempted first degree murder. Photo arrays are only potentially useful and not material and exculpatory, and thus Defendant was required to show that State acted in bad faith in failing to preserve photo arrays. As no evidence that State acted in bad faith, no due process violation. Court was within its discretion in not imposing sanctions for missing photo arrays, and was reasonable in admonishing jury that it was permitted to make a negative inference. Court properly allowed testimony of codefendant's confession, and State and court took significant precautions to not introduce substantive evidence from confession. (McBRIDE and HOWSE, concurring.)

People v. Thompson, 2016 IL App (1st) 133648 (March 8, 2016) Cook Co., 2d Div. (HYMAN) Affirmed.
(Court opinion corrected 3/10/16.) Defendant and a codefendant were convicted, after separate jury trials, of first degree murder and attempted first degree murder, for shooting of 16-year-old and 15-year-old cousins in front of their home. Potential problems with identifications of 3 State witnesses were presented to jury. Prior consistent statement of victim's brother to his father identifying Defendant and codefendant as the shooters was properly admitted when testified to by that witness as a statement of identification. Police officer's testimony as to the statement should not have been admitted, but any error was harmless. State's remarks in opening statements and closing arguments were questionable but do not rise ot level of clear and obvious error.(NEVILLE and SIMON, concurring.)

FINES, FEES & RESTITUTION

People v. Bruun, 2015 IL App (2d) 130598 (February 27, 2015) Kane Co. (McLAREN) Affirmed.
Court entered order requiring Defendant, who had been convicted of theft and financial exploitation of an elderly or disabled person, to make monthly restitution payments over a five-year period. Defendant remained obligated to make full restitution. Court later reduced amount of monthly installment payments, but did not extend period during which payments were due. Order did not become unenforceable as to unpaid amounts that became due during the five-year period. (JORGENSEN and BIRKETT, concurring.)

People v. McClinton, 2015 IL App (3d) 130109 (March 5, 2015) Whiteside Co. (LYTTON) Vacated in part and affirmed in part; remanded with directions.
Defendant was convicted, after jury trial, of delivery of less than one gram of cocaine, and he was sentenced to 7 years. Court erred in ordering reimbursement for public defender's service when Defendant was not given notice of hearing and was not allowed to present evidence as to his ability to pay. Court's actions in pronouncing amount to be paid to PD was "some sort of a hearing", but did not meet due process requirements. Case remanded for proper hearing on reimbursement. (O'BRIEN and SCHMIDT, concurring.)

People v. Daniels, 2015 IL App (2d) 130517 (March 6, 2015) Lake Co. (HUDSON) Affirmed in part and vacated in part.
Defendant was convicted of burglary after jury trial. Preindictment delay was due to defense counsel's numerous requests for continuances; thus, no error in 79-day delay of indictment. Public defender fee vacated, as court failed to conduct hearing on Defendant's financial resources, to determine his ability to pay public defender fee. (McLAREN and SPENCE, concurring.)

People v. Rankin, 2015 IL App (1st) 133409 (July 16, 2015) Cook Co., 6th Div. (HOFFMAN) Reversedin part and vacated in part; remanded withinstructions.
Defendant was convicted, after bench trial, of residential burglary and sentenced to 84 months imprisonment and then 3 years mandatory supervised release (MSR), with fines and costs of $549 and $450 fee for his court-appointed defense counsel. Evidence of record is so unsatisfactory that it creates reasonable doubt of Defendant's guilt. Remanded for court to conduct evidentiary hearing to consider Defendant's financial circumstance and ability to pay for costs of court-appointed counsel.(HALL and LAMPKIN, concurring.)

People v. Jones, 2015 IL App (3d) 130601 (August 6, 2015) Peoria Co. (McDADE) Vacated in part and remanded with directions.
Defendant pled guilty to theft in exchange for sentence of 12 months court supervision, and ordered Defendant to pay restitution and court costs. As court did not set fixed deadline for payment of any monetary obligations in any written order, clerk's imposition of collection fee is void.(CARTER, concurring; WRIGHT, specially concurring in part and dissenting in part.)

People v. Scalise, 2015 Il App (3d) 130720 (September 1, 2015) Will Co. (O'BRIEN) Vacated in part and modified in part; remanded with directions.
Defendant pled guilty to 2 counts of predatory criminal sexual assault of a child in exchange for consecutive sentences of 12 years on each charge. Court erred in imposing a $500 sex crimes assessment where cited statute did not authorize the assessment. The $500 sex offender fine became effective after date of offenses, and thus cannot be imposed as this would violate prohibition against ex post facto laws. Sentence is void to extent it did not include required $100 sexual assault fine. (LYTTON, concurring; WRIGHT, dissenting.)

People v. Goossens, 2015 IL 118347 (September 24, 2015) Rock Island Co. (KARMEIER) Appellate court affirmed; circuit court affirmed.
Police sergeant was convicted of intimidation, a Class 3 felony, after he threatened not to respond to 911 calls from a local auto racetrack as long as 2 former police officers were employed there. Defendant's sentence to 2 years probation included condition requiring that he become current on child support. Plain language of Unified Code of Corrections authorizes a trial court to impose any of the enumerated conditions under Section 5-6-3(b), regardless of whether condition relates to nature of Defendant's conviction. Thus, that Section provides express statutory authority to impose payment of child support as a condition of probation. (GARMAN, FREEMAN, THOMAS, KILBRIDE, BURKE, and THEIS, concurring.)

People v. Reed, 2016 IL App (1st) 140498 (January 27, 2016) Cook Co., 3d Div. (LAVIN) Affirmed.
(Court opinion corrected 2/25/16.) Court System fee of $50 is actually a fine. State's Attorney's Records Automation Fee of $2 is legally a fee. Public Defender Records Automation Fee is legally a fee. (MASON and FITZGERALD SMITH, concurring.)

People v. Ford, 2016 IL App (3d) 130650 (February 22, 2016) Peoria Co. (LYTTON) Affirmed in part and vacated in part; remanded with directions.
Defendant was convicted of reckless conduct for causing damage to a van owned by narcotics enforcement unit, when his vehicle collided with van in narrow driveway of apartment building where a confidential informant had arranged to buy drugs from Defendant. Evidence was sufficient to establish recklessness, as 2 officers testified that when Defendant saw van approaching his vehicle head on, he accelerated, causing collision. As Enforcement Unit suffered out-of-pocket expenses as a result of Defendant's conduct, it was entitled to restitution. Remanded for calculation of imposing proper fine, fee, assessment and court cost in written order with statutory authority for each. (CARTER and SCHMIDT, concurring.)

People v. Castillo, 2016 IL App (2d) 140529 (March 24, 2016) Lake Co. (McLAREN) Affirmed in part and vacated in part.
(Court opinion corrected 3/25/16.) Court erred in imposing public-defender fee of $250 after assistant public defender withdrew, as the exchange between assistant PD and court did not satisfy hearing requirement of Section 113-3.1(a) of Code of Criminal Procedure. A hearing, for the purpose of that Section, requires an inquiry, however slight, into issue of Defendant's ability to pay the PD fee.(JORGENSEN and BIRKETT, concurring.)

FITNESS

People v. Olsson, 2015 IL App (2d) 140955 (June 26, 2015) Lake Co. (ZENOFF) Affirmed. Defendant appeals from order following a hearing which he refused to attend conducted per Sections 104-25(g)(2) and (g)(2)(i) of Code of Criminal Procedure. Treatment plan reviews during Section 104-25(g)(2) period of treatment and hearings conducted pursuant to section (g)(2)(i) are not fitness hearings. Thus, Section 104-16(c of Criminal Code does not apply to such proceedings. Although Defendant had a right to attend hearing, he rejected court's attempts to facilitate his attendance. (HUTCHINSON and SPENCE, concurring.)

People v. Garcia, 2015 IL App (1st) 131180 (September 8, 2015) Cook Co., 2d Div. (HYMAN) Affirmed in part and dismissed in part.
(Modified upon denial of rehearing 2/2/16.) State, in 1998, charged Defendant with 2 counts of unlawful use of a weapon by a felon (UUWF) and 2 counts of simple unlawful use of a weapon (UUW). In 1999, while weapons charges still pending, State charged Defendant with first-degree murder, attempted first-degree murder, and aggravated battery after Defendant brought a gun to a fist fight. After a retrospective fitness hearing, court found that Defendant was fit in 2001 to be tried and sentenced for first-degree murder and to plead guilty to UUWF. Court's dismissal of Defendant's postconviction petition, after third-stage evidentiary hearing, was not manifestly erroneous. State offered credible evidence in form of defense counsels' testimony and a psychiatrist's report finding Defendant fit to stand trial in murder case and that he made his plea in felony weapons case knowingly and intelligently.(MASON and PUCINSKI, concurring.)

People v. Olsson, 2016 IL App (2d) 150874 (March 14, 2016) Lake Co. (ZENOFF) Affirmed. Defendant was charged with sex offenses involving children and was later found unfit to stand trial. Court found Defendant "not not guilty" of several offenses, and ordered extended period of treatment. At expiration of extended treatment period, court remanded Defendant to Department of Human Services for further treatment per Section 104-25(g)(2) of Code of Criminal Procedure. Per Defendant's treating psychiatrist, Defendant refused to attend the hearing scheduled pursuant to Section 104-25(g)(2)(i) of the Code. Defendant cannot complain of lack of treatment when he refuses to cooperate with his treatment staff at mental health center.A defendant's right to be present at every hearing on issue of his fitness does not apply to treatment plan reviews during Section 1-4-25(g)(2) period of treatment or hearings conducted pursuant to Section 104-25(g)(2)(i) of the Code. (HUTCHINSON and SPENCE, concurring.)

GRAND JURY / CHARGING

People v. Kliner, 2015 IL App (1st) 122285 (January 6, 2015) Cook Co., 4th Div. (FITZGERALD SMITH) Affirmed.
Defendant was convicted in 1996 of first degree murder and conspiracy to commit murder. Section 112-2 of Code of Criminal Procedure does not require affirmative showing of compliance that grand jury was impaneled and sworn. Record shows, on face of indictment, that a valid indictment was entered by a sworn grand jury. Thus, court properly denied Defendant's Section 2-1401(f) petition for relief from judgment, as Defendant's convictions are not void. (HOWSE and EPSTEIN, concurring.)

People v. Booker, 2015 IL App (1st) 131872 (May 12, 2015) Cook Co., 2d Div. (LIU) Affirmed in part and reversed in part; remanded with directions.
Defendant was convicted, after bench trial, of home invasion while armed with a dangerous weapon, robbery, attempted robbery, and unlawful restraint. As information charging Defendant with home invasion "while armed with a firearm" did not state a "broad foundation" or "main outline" of home invasion while armed with a dangerous weapon other than a firearm, court erred in convicting Defendant of uncharged offense of home invasion with a dangerous weapon other than a firearm. Home invasion with a dangerous weapon is not a lesser-included offense of home invasion with a firearm.(SIMON and PIERCE, concurring.)

People v. Wade, 2015 IL App (3d) 130780 (October 7, 2015) Kankakee Co. (SCHMIDT) Affirmed.
One Defendant was convicted, after jury trial, of attempted murder and unlawful possession of a weapon by a felon; another Defendant was convicted, by same jury, of attempted murder. Court did not err by instructing jury as to whether Defendants personally discharged a gun proximately causing great bodily harm, where Defendants' indictments did not include such allegations. Indictments sufficiently notified Defendants that State would seek 25-year enhancement. Language of indictments clearly alleged that Defendants personally discharged a weapon, and sufficiently notified Defendants jury would consider whether Defendants caused victim's injuries. State's failure to include all sentence-enhancing elements in indictment did not deny Defendants a fair trial nor undermine integrity of judicial process. (CARTER and HOLDRIDGE, concurring.)

People v. Boston, 2016 IL 118661 (February 26, 2016) Cook Co. (THEIS) Appellate court affirmed.
Defendant was convicted of 1997 first-degree murder of his former girlfriend. Defendant was charged in 2005 with murder, after a bloody palm print discovered at crime scene was shown to match Defendant's palm print obtained by State through grand jury subpoena. Information provided by State to grand jury was sufficiently tied to Defendant to hold there was individualized suspicion to warrant grand jury subpoena. Defendant failed to show that he was

prejudiced in any way by grand jury process employed by State to obtain palm prints. Grand jury that indicted Defendant heard evidence from police that palm print discovered at crime scene matched Defendant's. Nothing in record indicates that when grand jury issued subpoena that it was asked to grant agency powers, or that it had granted ASA or police detectives agency powers. Court properly denied Defendant's motion to quash subpoena and suppress palm print evidence. (GARMAN, FREEMAN, THOMAS, KILBRIDE, and KARMEIER, concurring.)

HEARSAY

People v. Schlott, 2015 IL App (3d) 130725 (April 15, 2015) Will Co. (WRIGHT) Reversed.
Defendant was charged with attempted first degree murder and aggravated domestic battery. Court erred in granting Defendant's pretrial motion in limine to exclude portions of Defendant's responses to questions posed by 911 operator. Defendant's statements are admissions, are thus not hearsay, and do not implicate confrontation clause. Court erred in granting Defendant's request to exclude State's DNA evidence which State submitted for analysis by crime lab within weeks of scheduled jury trial, as State disclosed it to defense promptly upon receipt as ongoing discovery, and defense failed to allege or show unfair prejudice to the State. (O'BRIEN, concurring; McDADE, dissenting.)

People v. Nixon, 2015 IL App (1st) 130132 (June 26, 2015) Cook Co., 5th Div. (GORDON) Affirmed.
Defendant was convicted, after jury trial, of aggravated sexual assault and sentenced to 30 years. Court did not err in allowing State to introduce testimony about a computer printout showing that another man's DNA profile (who was previously selected by victim out of photo array as possibly her assailant) was entered into State's database three months after assault. State offered record not for mere purpose of showing that his profile was stored in database, but for fact that database was continually generating comparisons against stored profiles.State failed to establish adequate foundation for record for business record exception to hearsay to apply, but error is not reversible, as other properly admitted evidence against Defendant is overwhelming.(PALMER and McBRIDE, concurring.)

People v. Quiroga, 2015 IL App (1st) 122585 (August 26, 2015) Cook Co., 3d Div. (HYMAN) Reversed.
Defendant was a volunteer at his children's elementary school, including as a member of Local School Council (LSC). School sent Defendant a letter, weeks after a LSC meeting when he argued with school principal about incident involving his daughter, notifying him that he had to seek permission before entering school property. On last day of school, Defendant stood on sidewalk and in street in front of school and solicited parents to sign petition to remove the school principal. Defendant was convicted, after bench trial, of criminal trespass to state-supported land.Statement of principal that some parents had complained that someone was

outside harassing them was hearsay which could not be used as evidence to prove Defendant interfered with parents' use or enjoyment of school. As State introduced no further evidence to prove this element of offense, State failed to establish Defendant's guilt beyond a reasonable doubt. (PUCINSKI and MASON, concurring.)

People v. Brothers, 2015 IL App (4th) 130644 (September 18, 2015) McLean Co. (STEIGMANN) Affirmed in part and reversed in part; remanded (No. 4-13-0644); affirmed (No. 4-13-0650).
Defendant was convicted, after jury trial, of home invasion, aggravated criminal sexual assault, domestic battery, and aggravated unlawful restraint, from incident when Defendant entered trailer of his estranged lover and physically and sexually attacked her over several hours. Later that month, Defendant pled guilty to harassment by telephone, when Defendant persuaded assault victim not to cooperate with prosecution in those cases; and violation of bail bond. State presented inadmissible hearsay and opinion testimony, and that was the only evidence supporting one conviction for aggravated criminal sexual assault. Retrial for that charge does not violate double jeopardy; evidence presented at first trial would have been sufficient for rational trier of fact to find essential elements of crime proven beyond a reasonable doubt, and thus retrial is proper remedy. Affirming verdict on all other counts, as properly admitted evidence overwhelmingly proved Defendant guilty of remaining counts. (KNECHT and HARRIS, concurring.)

People v. Burnett, 2015 IL App (1st) 133610 (December 18, 2015) Cook Co., 5th Div. (GORDON) Affirmed.
Defendant was convicted, after bench trial, of harassment in violation of order of protection obtained against him by his girlfriend, whose prior statement was admitted under statutory exception to hearsay that she was "unavailable for cross-examination" at trial. Defendant claimed violation of his 6th amendment right to confrontation. To be admitted, an out-of-court statement must satisfy a hearsay exception and a defendant's sixth amendment rights. Girlfriend persisted in her refusal to testify as to some questions, but did answer preliminary questions at trial and answered some questions about offense of conviction in her statement at trial. Thus, hearsay exception and sixth amendment were satisfied, and her statement was properly admitted. (REYES, concurring; McBRIDE, specially concurring.)

People v. Abram, 2016 IL App (1st) 132785 (March 7, 2016) Cook Co., 1st Div. (LIU) Affirmed.
Defendant was convicted, after jury trial, of possession of a controlled substance with intent to deliver and court was sentenced to 7 years. As there is no recognized exception to rule against hearsay in Illinois for present sense impressions, the police call-out tape was not properly admitted on that basis. However, statements qualified as excited utterances, circumstances of as officers' pursuit of Defendant were sufficiently startling to produce unreflective statements. State provided substantial evidence that Defendant was in actual possession of cocaine retrieved by

officers along path of vehicle and admitted as evidence. Officers consistently testified that they saw objects being thrown from vehicle and that in certain instances they were able to keep those objects in view and retrieve them for testing and identification. (CONNORS and HARRIS, concurring.)

INEFFECTIVE ASSISTANCE (not)

People v. Sharp, 2015 IL App (1st) 130438 (January 21, 2015) Cook Co., 3d Div. (HYMAN) Affirmed.
Defendant was charged with multiple offenses arising from shooting. Defendant was convicted of attempted first degree murder and aggravated battery with a firearm, and sentenced to total 55 years. No ineffective assistance of counsel; counsel's decision to not call two alibit witnesses was trial strategy, as those witnesses did not do well in Defendant's first trial (which ended in mistrial). No ineffective assistance of counsel in counsel's failure to object to court's polling of only 10 out of 12 jurors. Posttrial counsel's strategic decision to stand on posttrial motions and to offer no argument during sentencing was within range of professionally reasonable judgments. Firearm enhancement statute of 25-years-to-life is not unconstitutionally vague.(PUCINSKI and LAVIN, concurring.)

People v. Shines, 2014 IL App (1st) 121070 (February 4, 2015) Cook Co., 3d Div. (HYMAN) Affirmed.
Defendant was convicted, after bench trial, of aggravated fleeing and eluding. Convictions do not violate the one-act, one-crime doctrine, because Defendant committed more than one act during the course of an offense. His two separate acts were his driving at a high rate of speed, and his contravention of traffic control devices. Trial court was without jurisdiction to consider Defendant's pro se letter, entitled "Motion of Appeal", alleging ineffective assistance of counsel, as it was filed after 30-day window following entry of final judgment.(PUCINSKI and MASON, concurring.)

People v. Cotto, 2015 IL App (1st) 123489 (February 11, 2015) Cook Co., 3d Div. (LAVIN) Affirmed.
Defendant appealed second-stage dismissal of his postconviction petition, claiming that his privately retained postconviction counsel failed to provide him reasonable assistance with his petition because he failed to contest the State's assertion that the untimely filing of his petition was due to his culpable negligence. Although a pro se defendant had a right to reasonable assistance from appointed counsel, State is not required to provide reasonable assistance of counsel for any petitioner able to hire his own postconviction counsel, and thus Defendant failed to state a cognizable claim for relief. Here, private counsel's performance was not so deficient that he failed to provide reasonable level of assistance, and his argument appears to have been the best option available.(HYMAN, concurring; PUCINSKI, dissenting.)

People v. Kirklin, 2015 IL App (1st) 131420 (March 6, 2015) Cook Co., 5th Div. (GORDON) Affirmed.
(Court opinion corrected 4/6/15.) Defendant was convicted, after bench trial, of aggravated battery. No ineffective assistance of counsel. Claim of ineffective assistance must be evaluated based on entire record. Defense counsel thoroughly exposed weaknesses and contradictions in State's case through cross-examination. Counsel's failure to introduce evidence of victim's recent cocaine use likely did not change outcome of trial. (McBRIDE and REYES, concurring.)

People v. Brown, 2015 IL App (1st) 122940 (March 11, 2015) Cook Co., 3d Div. (HYMAN) Affirmed.
Court properly dismissed Defendant's second-stage postconviction petition, after his conviction for unlawful use of a weapon by a felon. Allegations in petition, with supporting documentation, fail to make substantial showing of any constitutional deprivation to warrant third-stage proceeding. No ineffective assistance of counsel claim, as Defendant cannot show prejudice from his claims that his counsel failed to relay State's plea offer, and that counsel failed to inform him of sentence he faced if convicted. Defendant cannot show reasonable probability that he would have accept plea offer and that if he had, court would have accepted it.(PUCINSKI and LAVIN, concurring.)

People v. Brown, 2015 IL App (1st) 131552 (June 30, 2015) Cook Co., 3d Div. (HYMAN) Affirmed.
(Court opinion corrected 7/14/15.) Defendant was convicted, after jury trial, of felony murder based on fatal traffic accident occurring while he and co-offender fled from scene of residential burglary. Sufficient evidence to find Defendant guilty beyond a reasonable doubt. During course of commission of residential burglary, Defendant set in motion chain of events that led to fatal car accident while he tried to evade police capture. Defense counsel's decision not to provide definition of foreseeability to jury at its request was sound trial strategy in face of legally sufficient jury instruction and defense theory that jury rely on "common sense". Thus, no ineffective assistance of counsel.(PUCINSKI and LAVIN, concurring.)

People v. Crutchfield, 2015 IL App (5th) 120371 (June 29, 2015) St. Clair Co. (GOLDENHERSH) Affirmed in part and reversed and remanded in part with directions.
Defendant was convicted, after jury trial, of first-degree murder of his girlfriend's 6-year-old son, and sentenced to natural life in prison. Illinois Supreme Court invalidated provision mandating life imprisonment for adult murderers of children. Court made proper inquiry of Defendant personally in court, and court's determination that Defendant's claims of ineffective assistance of counsel lacked merit and pertained to trial strategy is not manifestly erroneous.Defendant failed to overcome presumption that counsel's action or inaction was the result of sound trial strategy. Counsel's decision to not impeach three instances of testimony of victim's mother was sound trial

strategy, especially as counsel thoroughly impeached her at trial by informing jury of her inconsistent statements and lack of credibility. (WELCH and STEWART, concurring.)

People v. Hughes, 2015 IL App (1st) 131188 (August 7, 2015) Cook Co., 5th Div. (GORDON) Affirmed.
Defendant was convicted, after jury trial, of first degree murder and attempted armed robbery and sentenced to 55 years. Court properly denied Defendant's pro se postconviction petition alleging ineffective assistance of trial counsel. The only supporting document is Defendant's own affidavit stating that ASA violated his Miranda rights, which is not enough to support gist of a meritorious constitutional claim that defense counsel was ineffective in not objecting to ASA's testimony as to interview with Defendant. Defendant failed to overcome presumption, created by his postconviction counsel's filing of 651(c) certificate, that Defendant received effective assistance of postconviction counsel.(McBRIDE and REYES, concurring.)

People v. Carranza-Lamas, 2015 IL App (2d) 140862 (August 13, 2015) McHenry Co. (SPENCE) Affirmed.
Defense counsel was not obligated to inform Defendant of the specific consequences that pleading guilty to a drug crime and receiving Second 410 first-offender probation would have on discretionary immigration relief. Thus, counsel's performance was not constitutionally deficient under U.S. Supreme Court's decision in Padilla v Kentucky. In contrast to the defendant in Padilla case, Defendant here was aware of possibility of deportation based on his illegal presence in U.S., and the law was not succinct and straightforward, so defense counsel met his obligations by advising Defendant that guilty plea would have some sort of immigration consequences and that he should speak to an immigration attorney.(BURKE, concurring; HUTCHINSON, specially concurring.)

People v. Winkfield, 2015 IL App (1st) 130205 (September 30, 2015) Cook Co., 2d Div. (HYMAN) Affirmed.
Defendant was convicted, after jury trial, of aggravated vehicular hijacking, armed robbery, and aggravated unlawful restraint. Defense counsel promised, in opening statement, to present alibi witnesses whose story would be completely at odds with State's case. Although defense counsel presented testimony highlighting inconsistencies and weaknesses in State's case, no evidence directly contradicted State's case. As evidence of Defendant's guilt was not overwhelming, had counsel properly supported defense theory with witness testimony, counsel's unfulfilled promise did prejudice Defendant. However, given overall nature and quality of evidence considered given counsel;s otherwise effective representation, counsel did not render ineffective assistance. (PIERCE and SIMON, concurring.)

People v. Rogers, 2015 IL App (2d) 130412 (September 29, 2015) Lake Co. (HUTCHINSON) Affirmed.
Defendant was convicted, after jury trial, of attempted first-degree murder, solicitation of murder, and home invasion. No ineffective assistance of counsel; defense counsel's decision whether and to what extent to challenge attacker as to proffer agreement and his statement was part of a reasonable trial strategy to exploit the inconsistencies in his statements, to challenge his credibility, and to emphasize his relationship with daughter of Defendant and victim, who was Defendant's former husband. Defense counsel's failure to object during State's closing argument did not deprive Defendant of a fair trial; prosecutor is allowed wide latitude in closing arguments. Once court granted Defendant's postconviction petition, it vacated Defendant's guilty plea and accompanying sentence, both parties were then returned to status quo as it existed prior to acceptance of plea, and thus court then correctly reinstated all charges and order trial on all charges. Neither side could then later claim benefit of prior agreement. (ZENOFF and SPENCE, concurring.)

People v. Wallace, 2015 IL App (3d) 130489 (October 16, 2015) Will Co. (SCHMIDT) Affirmed.
Defendant was convicted, after jury trial, of first-degree murder and aggravated battery with a firearm. Court properly summarily dismissed Defendant's postconviction petition as frivolous and patently without merit. Efforts to quash Defendant's arrest would have been futile, as testimony of trial witnesses and police reports show that police had probable cause to arrest Defendant before transporting him to the station. Police detention of Defendant at scene of shooting for 45 minutes was reasonable, and his arrest was supported by probable cause. Thus, no ineffective assistance of counsel. (O'BRIEN and WRIGHT, concurring.)

People v. Peterson, 2015 IL App (3d) 130157 (November 12, 2015) Will Co. (CARTER) Affirmed.
Defendant was convicted, after jury trial, of first degree murder of his 3rd ex-wife and sentenced to 38 years in prison. Evidence was sufficient to prove beyond a reasonable doubt that Defendant committed first-degree murder. Court did not err in finding that clergy privilege was inapplicable to pastor's testimony about what Defendant's 4th wife, who disappeared 3 years after 3rd ex-wife's death, had told him at her counseling session 2 months before her disappearance. Court properly found conversation was not confidential, as it was in public with at least one other person present. Court's prior ruling admitting certain statements of 2 victims under common law doctrine of FBWD (forfeiture by wrongdoing) stands as the law of the case. Use of statements was not so extremely unfair to Defendant that their admission violated Defendant's due process right to a fair trial.Court's ruling admitting testimony of a person who testified that Defendant had tried to hire him to kill 3rd ex-wife was within its discretion. Defense attorney did not have a per se conflict of interest in representing Defendant as a result of media rights contract which Defendant and defense attorney jointly co-signed and which began and ended before Defendant was indicted. Decision to call 4th ex-wife's divorce attorney was a matter of trial strategy as

Defendant was seeking to discredit impression of her that pastor's testimony had given to jury, and was largely cumulative to pastor's testimony.(O'BRIEN and SCHMIDT, concurring.)

People v. Shipp, 2015 IL App (2d) 131309 (December 1, 2015) Kane Co. (McLAREN) Affirmed.
Defendant filed postconviction petition alleging ineffective assistance of trial counsel in that counsel failed to impeach detective with a prior inconsistent statement and failed to seek to admit as substantive evidence the police report containing prior inconsistent statement; and that appellate counsel was ineffective for failing to raise those issues on direct appeal. Trial counsel did impeach detective to the extent possible.Decisions whether to emphasize the difference between what detective said on direct and what he admitted on cross, and whether to offer police report as substantive evidence, were issues of trial strategy.(SCHOSTOK and BIRKETT, concurring.)

People v. Nelson, 2016 IL App (4th) 140168 (March 10, 2016) Sangamon Co. (KNECHT) Affirmed in part and vacated in part; remanded with directions.
Defendant was convicted, after jury trial, of 3 counts of first degree murder. In physical altercation with another male, Defendant's uncle punched victim, causing victim to fall straight back, with his head striking the concrete. Defendant, then age 17, approached victim and tossed a cinder block onto victim's head. Postconviction counsel did not fail to provide reasonable representation by failing to conduct a search to find expert who would support Defendant's claims, to rebut testimony of State's expert physician who testified that cinder block, and not punch, caused victim's death. Section 5-130 of Juvenile Court Act, providing for automatic transfer to adult criminal court, does not violate 8th Amendment. (STEIGMANN and APPLETON, concurring.)

People v. Veach, 2016 IL App (4th) 130888 (March 11, 2016) Coles Co. (STEIGMANN) Affirmed.
(Court opinion corrected 3/21/16.) Defendant was convicted, after 2013 jury trial, of 2 counts each of attempt (first degree murder) and aggravated battery. Court later imposed consecutive prison sentences of 16 years on attempt convictions. On direct appeal, Defendant argued that he was denied effective assistance of trial counsel when his counsel stipulated to admission, during trial, of video recordings containing prior consistent statements and bad character evidence. Record is inadequate for appellate court to resolve, as it contains no indication why defense counsel agreed to admission of recordings, and it would be improper for appellate court to speculate as to defense counsel's motivation. Defendant may raise his claim through Post-Conviction Hearing Act. (HOLDER WHITE, concurring; APPLETON, dissenting.)

People v. Guja, 2016 IL App (1st) 140046 (March 18, 2016) Cook Co., 5th Div. (REYES) Affirmed as modified.
Defendant was convicted, after bench trial, of domestic battery and unlawful restraint of his then-girlfriend, but was acquitted of several other offenses; and was sentenced to 2 concurrent 2-year terms in DOC. No ineffective assistance of counsel for failing to include affirmative defenses of necessity and self-defense in his answer to discovery. Defendant was not prejudiced at trial as a result of the claimed error, as record does not contain even "some evidence" which satisfies requirements of necessity and self-defense. Court did not abuse its discretion in denying Defendant's motion to amend answer as a sanction for discovery violation, as Defendant failed to show he was prejudiced.(GORDON and LAMPKIN, concurring.)

INEFFECTIVE ASSISTANCE (ineffective)

People v. Coleman, 2015 IL App (4th) 131045 (January 6, 2015) Macon Co. (APPLETON) Reversed and remanded with directions.
Defendant was sentenced to 25 years for unlawful delivery of 900 grams or more of substance containing cocaine, after previous conviction for unlawful delivery of controlled substance. Police officer testified that he commingled powder from 15 separate bags before sending the commingled powder submitted as Exhibit found in Defendant's possession. Ineffective assistance of counsel by defense counsel entering into stipulation that 926 grams of powder in Defendant's possession were "cocaine". Defendant counsel should have investigated whether substances in 15 bags were separately tested to determine whether each individual bag was substance containing cocaine, as case law requires. Conviction for lesser amount would have resulted in sentence of 6 to 30 years, and lower fines. (POPE and STEIGMANN, concurring.)

People v. Simpson, 2015 IL 116512 (January 23, 2015) Cook Co. (THOMAS) Reversed.
Defendant was convicted, after jury trial, of first degree murder in beating death. Ineffective assistance of counsel in failing to object to videotaped statement, that Defendant told him that he beat victim, as substantive evidence that Defendant struck victim numerous times with a bat. As person giving statement had no personal knowledge of beating, out-of-court videotaped statement was not given imprimatur of admissibility required for prior inconsistent statements. Reasonable probability that outcome would have been different, but for defense counsel's ineffectiveness. Eyewitness, age 74, was not able to identify Defendant or codefendant at trial 4 1/2 years after incident.(GARMAN, FREEMAN, KILBRIDE, KARMEIER, BURKE, and THEIS, concurring.)

People v. Deltoro, 2015 IL App (3d) 130381 (April 22, 2015) Will Co. (HOLDRIDGE) Reversed and remanded.
Defendant, a legal permanent resident of U.S., entered negotiated guilty pleas to unlawful possession of controlled substance with intent to deliver. Defendant was to be released from

MSR to federal immigration authorities, as when pleading guilty to offense relating to a controlled substance, deportation is presumptively mandatory. Defendant presented gist of a constitutional claim for ineffective assistance of plea counsel. Existence of plausible trial defense is not required to show prejudice in cases involving counsel's failure to advise a defendant as to immigration consequences of his guilty plea. Defendant was arguably prejudiced by his plea counsel's deficient performance, as Defendant alleged that he would not have pled guilty if plea counsel had fully advised him of potential immigration consequences of his plea (McDADE and O'BRIEN, concurring.)

People v. Romero, 2015 IL App (1st) 140205 (June 22, 2015) Cook Co., 1st Div. (HARRIS) Reversed and remanded.
Defendant was acquitted, after jury trial, of attempted first degree murder, but convicted of aggravated discharge of a firearm and aggravated battery with a firearm. Defendant presented arguable basis for claim of ineffective assistance of counsel, based on trial court's consideration of improper factor in aggravation. Appellate and trial counsel performance fell below objective standard of reasonableness, as court improperly considered level of intent and conduct for which Defendant was acquitted. Court's comments indicated that it believed that Defendant intended that the bullet would hit the officer, but jury's verdict negates that. (CUNNINGHAM, concurring; DELORT, dissenting.)

People v. Lofton, 2015 IL App (2d) 130135 (July 24, 2015) Winnebago Co. (McLAREN) Reversed and remanded.
Defendant was convicted, after jury trial, of three counts of first-degree murder and one count of attempted armed robbery, and sentenced to natural life in prison to be served consecutively with 20 years for attempt, to be served consecutively to 75-year sentence for prior, unrelated murder. Ineffective assistance of counsel in defense counsel's failure to object to witness' written statement, as substantive evidence, that he heard Defendant say he shot victim, as witness did not perceive the events that were subject of statement; improperly admitted statement was bolstered by detective's repetitious testimony ot it.Defense counsel erred in allowing other witness' double hearsay grand jury testimony to go to jury in written form. (HUTCHINSON, concurring; ZENOFF, dissenting.)

People v. Valdez, 2015 IL App (3d) 120892 (May 19, 2015) Bureau Co. (McDADE) Vacated and remanded.
(Modified upon denial of rehearing 8/19/15.) Defendant was a noncitizen who pled guilty to burglary predicated on theft. Court erred in denying Defendant's motion to withdraw his guilty plea. Immigration consequences of plea were clear, and counsel failed to meet his duty to advise Defendant of those consequences. Defendant was prejudiced by counsel's deficiencies, and prejudice was not cured by court's admonishments under Section 113-8, as that section warns only that nebulous immigration consequences may occur, but in this case, deportation was presumptively mandatory. Defendant established reasonable probability that, had he knew that

deportation was "practically inevitable", he would have rejected guilty plea and proceeded to trial. (CARTER, concurring; HOLDRIDGE, specially concurring.)

People v. Ross, 2015 Il App (3d) 130077 (September 18, 2015) Rock Island Co. (O'BRIEN) Reversed and remanded.
Defendant pled guilty to felony murder and sentenced to 60 years. Defendant was denied reasonable assistance of postconviction counsel, as counsel filed no affidavits or depositions and offered no oral testimony or other evidence to support Defendant's ineffective assistance of counsel claim based on his trial counsel's wrong advice about applicability to Defendant's sentencing of truth-in-sentencing amendments. Postconviction counsel failed to comply with Rule 651(c), in failing to make all necessary amendments to pro se petition.(HOLDRIDGE, concurring; SCHMIDT, concurring in part and dissenting in part.)

People v. Lopez, 2015 IL App (1st) 142260 (September 30, 2015) Cook Co., 4th Div. (HOWSE) Reversed.
Defendant pled guilty to possession of a controlled substance, a Class 4 felony. Court treated Defendant's "Amended Motion to Withdraw Plea of Guilty", filed 8 months later, as a petition for postconviction relief and summarily dismissed it. Given facts alleged, had Defendant been properly advised of immigration consequences of his plea, Defendant's decision to reject the plea bargain would have been rational under the circumstances, including nature of offense and Defendant's lack of criminal history.Defendant's affidavit stated that defense counsel never advised him that pleading guilty would cause him to be immediately deported from U.S. and separated from his family. Defendant made a substantial showing of ineffective assistance of counsel. (McBRIDE and ELLIS, concurring.)

People v. Blanchard, 2015 IL App (1st) 132281 (October 13, 2015) Cook Co., 2d Div. (PIERCE) Remanded; dismissal vacated.
Defendant was convicted of armed robbery, and alleged that his appointed postconviction counsel provided unreasonable assistance under Supreme Court Rule 651(c) by failing to review trial exhibits that contained evidence crucial to his pro se claims. Remanded to trial court to allow postconviction counsel to comply with Rule 651(c) requirements as to exhibits, and to allow a supplemental certificate to be filed, if requested; and circuit court directed to then reconsider Defendant's petition or amended petition. (NEVILLE and SIMON, concurring.)

People v. Lamar, 2015 IL App (1st) 130542 (November 19, 2015) Cook Co., 4th Div. (COBBS) Reversed and remanded.
Defendant's postconviction petition supports a substantial showing that he was denied effective assistance of counsel in alleging that trial counsel failed to file a notice of appeal. Defendant alleged that he never told counsel that he did not want to appeal, he thought one was pending, and he expected and wanted an appeal, and explicitly asked trial counsel to take steps to prepare an appeal. Allegations, if proven at evidentiary hearing, would demonstrate that trial counsel's

performance was deficient. Defendant's petition sets forth a substantial showing of a constitutional violation and thus Defendant is entitled to an evidentiary hearing. (McBRIDE and HOWSE, concurring.)

People v. Hughes, 2015 IL 117242 (December 17, 2015) Cook Co (GARMAN) Appellate court affirmed in part and reversed in part; circuit court affirmed; remanded.
Defendant was convicted, after bench trial, of first-degree murder in shooting death of 68-year-old victim during botched robbery attempt. Alleged co-conspirator was shot to death next day. Defendant's own taped interrogation was admitted against him at trial. At trial, defense counsel's arguments as to motion to suppress were broadly worded, but many arguments advanced on appeal had not been argued at trial. Drastic shift in factual theories deprived State of opportunity to present evidence as to them. (FREEMAN, KARMEIER, and THEIS, concurring; BURKE, THOMAS, and KILBRIDE, specially concurring.)

People v. Rodriguez, 2015 IL App (2d) 130994 (December 23, 2015) Ogle Co. (McLAREN) Vacated and remanded.
Defense counsel failed to substantially comply with Rule 651(c), and he failed to provide reasonable level of assistance at second stage postconviction proceedings. Defendant's fitness to stand trial was a constitutional issue that was strongly considered, should have been fully explored, and possibly should have been raised in amended postconviction petition. Defense counsel never fully explored issue, and never raised issue. Defendant's fitness at time of trial needed to be reviewed in order for defense counsel to properly prepare amended postconviction petition. (JORGENSEN and HUDSON, concurring.)

People v. Salem, 2016 IL 118693 (January 22, 2016) Will Co. (GARMAN) Appellate court vacated; appeal reinstated.
(Correcting court designation.) Defendant's two notices of appeal were not filed within 30 days of sentencing nor within 30 days of orders disposing of timely filed motions against judgment, and thus appeals were not timely, and appellate court did not have jurisdiction. However, given unique facts of case, Defendant was understandably confused about when to file appeals. Trial counsel and the court were confused as to time to file motion for new trial, and neither State nor court took issue with timeliness of Defendant's motions for new trial. As the right to appeal a criminal conviction is fundamental, Supreme Court, in exercise of its supervisory authority, ordered appeal reinstated. (FREEMAN, THOMAS, KILBRIDE, KARMEIER, BURKE, and THEIS, concurring.)

People v. Tayborn, 2016 IL App (3d) 130594 (March 7, 2016) Will Co. (CARTER) Reversed and remanded.
Defendant was convicted, after jury trial, of possession of cocaine. Defense counsel provided ineffective assistance of counsel by failing to file a motion to suppress Defendant's statement that he was transporting cocaine to Iowa, which Defendant made in response to police questioning

without having received Miranda warnings. During vehicle search, driver of vehicle had already been arrested and placed in a squad car. Cocaine was found in vehicle during search. As trial judge found that Defendant was in custody at time cocaine was discovered, when officer questioned Defendant a bout the cocaine, the questioning was a custodial interrogation without Defendant having first been given Miranda warnings. Defendant's statement would have been inadmissible at trial, and outcome of trial would have been different had his admission been suppressed.(WRIGHT, concurring; SCHMIDT, dissenting.)

People v. Jones, 2016 IL App (3d) 140094 (March 16, 2016) Rock Island Co. (O'BRIEN) Reversed and remanded with directions.
After unsuccessful direct appeal, Defendant filed pro se postconviction petition. Court appointed counsel once petition advanced to second stage.Defendant's pro se allegations are sufficient to alert appointed counsel that Defendant's contention encompassed a claim that trial counsel provided ineffective assistance of counsel. Trial counsel argued extensively that omitted statements were necessary to Defendant's defense, but then failed to present them when afforded the opportunity. It was necessary for appointed counsel to either allege facts as to content of statements omitted from redacted videotape or attach evidentiary support to petition, either the entire videotaped statement or affidavit of Defendant as to substance of statements. Thus, record rebuts presumption that appointed counsel provided Defendant with reasonable assistance of postconviction counsel. (LYTTON, concurring; CARTER, dissenting.)

INEFFECTIVE ASSISTANCE (procedure & conflict of interest)

People v. Lewis, 2015 IL App (1st) 122411 (February 27, 2015) Cook Co., 5th Div. (REYES) Affirmed.
Defendant was convicted, after jury trial, of first degree murder, and sentenced to 60 years. Defendant did not raise issue of self-defense at trial and State was not obliged to disprove that affirmative defense. Trial court properly refused self-defense instructions based on insufficient evidence. Court did not err in allowing State to introduce evidence and present argument that Defendant was hiding from the police. A jury could validly infer from evidence that Defendant knew he was a suspect and that he consciously avoided the police. Court conducted a Krankel inquiry, permitting Defendant opportunity to present each point raised in his pro se motion claiming ineffective assistance of counsel, followed by brief discussion between court and defense counsel as to conduct, and concluding with court's observation of defense counsel's performance at trial. Court's finding of no ineffectiveness of counsel was not manifestly erroneous. (PALMER and McBRIDE, concurring.)

People v. Flemming, 2015 IL App (1st) 111925-B (May 1, 2015) Cook Co., 5th Div. (PALMER) Affirmed and remanded.
(Court opinion corrected 5/1/15.) Defendant was convicted, after bench trial, of second degree murder and aggravated battery, sentenced to 20 years. Under Illinois Supreme Court's 2014 decision in People v. Jolly, trial court committed reversible error by allowing State to rebut Defendant's pro se allegations at preliminary Krankel inquiry on Defendant's pro se ineffective assistance of counsel claim. (McBRIDE and REYES, concurring.)

People v. Robinson, 2015 Il.App(1st) 130837 (June 26, 2015) Cook Co.,
Affirmed in part, Reversed in Part, Remanded with Instructions
Defendant was convicted of residential burglary and aggravated battery. Defendant alleged ineffective assistance and a Krankle hearing was held by the Court. After allowing the defendant to make all of his claims, the Court sought rebuttal first from defense counsel and then from the State. On appeal the State argued that by waiting until after the defendant was finished the proceeding remained non-adversarial. *Jolly* applies retroactively. Whether the State is permitted to rebut each claim as it is voiced or after the defendant concludes is immaterial to determining if the proceeding is adversarial. State is afforded "virtually no opportunity" to participate in Krankle hearing. (GORDON)

People v. Washington, 2015 IL App (1st) 131023 (June 30, 2015) Cook Co., 2d Div. (PIERCE) Remanded with directions.
Defendant was convicted, after bench trial, of possession of a controlled substance and sentenced to 18 months in prison. Court erred in informing Defendant that he was required to file a written motion, upon Defendant making oral pro se posttrial claim of ineffective assistance of trial counsel. Defendant then stated that he could not put his claim in writing and only "withdrew" his motion when court again stated that motion must be in writing. Court denied Defendant opportunity to tell court of his specific complaints as court cut him short by insisting that he must put motion in writing. Court erred in failing to conduct inquiry into basis of alleged claim. Remanded for limited purposes of allowing trial court to conduct required preliminary investigation. (NEVILLE and LIU, concurring.)

People v. Poole, 2015 IL App (4th) 130847 (September 16, 2015) Sangamon Co. (POPE) Reversed and remanded with directions.
Defendant was convicted, after jury trial, of aggravated battery and theft. Defense counsel operated under per se conflict of interest, as he contemporaneously represented Defendant and his girlfriend, who State called as a hostile witness. State used girlfriend's testimony to introduce her prior inconsistent statements, made during her police interviews, as substantive evidence. Thus, girlfriend's testimony was not beneficial only to Defendant. Defendant was not adequately informed of the significance of the conflict, and his waiver was not knowing and intelligent waiver of conflict. (STEGMANN and APPLETON, concurring.)

People v. Taylor, 2015 IL App (4th) 140060 (December 15, 2015) Macon Co. (APPLETON) Affirmed.
Defendant was convicted, after jury trial, of aggravated domestic battery for beating his brother-in-law. Defendant forfeited review of errors he claimed had deprived him of a fair trial. Ineffective assistance of counsel claims should be raised in postconviction proceedings where a better record can be made. Court conducted adequate Krankel inquiry into his pro se posttrial allegations of ineffective assistance of counsel. Sentence of 15 years was not excessive; Defendant committed offense while on parole, and had several prior criminal convictions, and was to be sentenced as Class X offender based on prior record. (TURNER and STEIGMANN, concurring.)

People v. Shaw, 2015 IL App (4th) 140106 (December 21, 2015) Champaign Co. (HARRIS) Affirmed.
Defendant was convicted, after jury trial, of attempt (criminal sexual assault), and sentenced to 30 years. Record contains no specific or express complaints by Defendant about his counsel's performance, and thus no Krankel inquiry was required. Court appropriately relied on stipulated evidence as to psychiatric expert's opinion testimony to find Defendant fit to stand trial. Record does not indicate that Defendant's mental health changed significantly from time of evaluation of his fitness for trial and time of his trial or sentencing. Thus, court was not required to sua sponte order a fitness hearing during trial and sentencing phases of underlying proceeding. (APPLETON, concurring; STEIGMANN, specially concurring.)

People v. Demus, 2016 IL App (1st) 140420 (February 10, 2016) Cook Co., 3d Div. (MASON) Remanded with directions.
Defendant was sentenced to 2 years probation after pleading guilty to vehicular burglary. State then filed petition for violation of probation after Defendant was arrested for another vehicular burglary; defendant was then found in violation of probation and sentenced to 6 years. Court erred in focusing on underlying merit of Defendant's claim as to event query, rather than addressing merits of whether his trial counsel was ineffective for failing to obtain it. By proceeding directly to hearing on Defendant's substantive claim where he was forced to participate pro se, and where his counsel he claimed was ineffective participated in hearing, court deprived him of benefit of new counsel in exploring his claim of ineffective assistance of counsel. (FITZGERALD SMITH and PUCINSKI, concurring.)

People v. Jackson, 2016 IL App (1st) 133741 (March 10, 2016) Cook Co., 4th Div. (ELLIS) Affirmed in part and vacated in part; remanded.
Defendant was convicted, after jury trial, of delivery of less than one gram of a controlled substance (heroin) within 1,000 feet of a school, and sentenced to 13 years. Court failed to properly conduct preliminary Krankel hearing, by moving directly to merits of Defendant's claim of ineffective assistance of counsel without first determining whether sufficient facts were alleged to show possible neglect and deciding whether to appoint conflict counsel. Court denied

Defendant his constitutional right to self-representation at posttrial proceedings that followed Krankel hearing; remanded for new proceedings oin motion for new trial and sentencing because Defendant invoked his right to represent himself. Given trial judge's prior rulings and comments to Defendant, remanded to a different trial judge for new preliminary Krankel hearing, for hearing on motion for new trial if necessary, and for sentencing if necessary. (McBRIDE and COBBS, concurring.)

People v. Mourning , 2016 Il App (4th) 140270 (March 31, 2016) Macon Co. (STEIGMANN) Remanded with directions.
(Court opinion corrected 4/7/16.) Defendant was convicted, after jury trial, of 2 counts of predatory criminal sexual assault of a child.Defendant then filed pro se posttrial motion claiming that his privately retained counsel had provided him ineffective assistance, and Defendant explicitly requested new counsel, and court was informed that Defendant lacked funds to hire private counsel and needs service of public defender. Court erred in failing to conduct adequate Krankel hearing, by failing to conduct any interchange with Defendant. In every case, court must conduct some type of inquiry into underlying factual basis, if any, of a Defendant's pro se posttrial claim of ineffective assistance of counsel. Krankel hearing is required even when a defendant is represented by private counsel. (TURNER and APPLETON, concurring.)

People v. Willis, 2016 IL App (1st) 142346 (April 19, 2016) Cook Co., 2d Div. (HYMAN) Affirmed in part and dismissed in part.
Defendant alleged that trial court failed to adequately inquire into his posttrial allegations of ineffective assistance of counsel in violation of Krankel and appellate court's mandate upon remand. Court fully considered Defendant's pro se claim of ineffective assistance by discussing the claim with him, and evaluating the claim based on its knowledge of defense counsel's performance and insufficiency of claim on its face.Cour did not err in denying Defendant's claim without appointing new counsel to investigate it, as court conducted adequate inquiry into Defendant's claim of error. Defense counsel's failure to request lesser included offense instructions of second degree murder and involuntary manslaughter was reasonable exercise of trial strategy. (PIERCE and NEVILLE, concurring.)

INTENT

People v. Hatchett, 2015 IL App (1st) 130127 (December 28, 2015) Cook Co., 1st Div. (CUNNINGHAM) Affirmed.
Defendant and a co-defendant were charged with first-degree murder, and initially were both represented by the same private attorney. Conflict as to dual representation was resolved by court at an early stage during pretrial proceedings, when court found that a conflict of interest existed and appointed separate counsel for co-defendant, allowing private attorney to solely represent Defendant. Court had no additional duty to admonish Defendant about conflict of

interest after dual representation was resolved and risk of conflict of interest was removed.Court properly dismissed postconviction petition at third stage, where Defendant failed to make substantial showing of denial of effective assistance of counsel due to conflict of interest, and failed to establish prejudice.(CONNORS and HARRIS, concurring.)

People v. Jellis, 2016 IL App (3d) 130779 (January 26, 2016) Whiteside Co. (SCHMIDT) Affirmed.
Defendant was convicted of home invasion and 6 counts of aggravated criminal sexual assault, and sentenced to 75 consecutive years imprisonment. Court properly found that State had made a 30-year plea offer, and that there was no evidence that counsel ever conveyed the offer to Defendant. Court properly concluded that Defendant failed to satisfy second prong of ineffective assistance of counsel Strickland test, as Defendant failed to show he would have accepted the 30-year plea offer absent counsel's deficient performance. Evidence established that Defendant either did or would have rejected a 30-year offer by making a counteroffer, and that State would have revoked any existing offer as prosecutor received DNA evidence. (HOLDRIDGE, specially concurring; McDADE, dissenting.)

INVOLUNTARY COMMITMENT / MEDICATION

In re Deborah S., 2015 IL App (1st) 123596 (January 16, 2015) Cook Co., 5th Div. (PALMER) Reversed.
After hearing, court found that Respondent was subject to involuntary commitment. Collateral consequences exception to mootness doctrine is applicable to this case as Respondent's ability to seek employment similar to her past employment would be negatively impacted by involuntary admission order. State failed to establish by clear and convincing evidence that Respondent was unable to meet her basic physical needs so as to guard herself from serious harm. Thus, order of involuntary commitment was against manifest weight of evidence. (McBRIDE and GORDON, concurring.)

In re Linda B., 2015 IL App (1st) 132134 (February 18, 2015) Cook Co., 3d Div. (PUCINSKI) Affirmed.
Section 3-611 of Mental Health Code requires that mental health facility director file petition for involuntary admission and two supporting certificates within 24 hours of after person's admission to the facility. Respondent was not admitted to facility in a legal sense pursuant to Article VI of Mental Health Code when she first entered medical floor of hospital because of tachycardia and severe anemia. Thus, 24-hour filing requirement of Section 3-611 was inapplicable at that point. Petition was timely as it was filed within 24 hours after it was presented to mental health facility director at hospital. (LAVIN and MASON, concurring.)

In re Maureen D., 2015 IL App (1st) 141517 (August 14, 2015) Cook Co., 6th Div. (ROCHFORD) Affirmed.
(Court opinion corrected 8/25/15.) Court authorized involuntary administration of psychotropic medications to Respondent. Psychiatrist, who filed petition for involuntary administration, testified to his compliance with Section 2-102(a-5) of Mental Health Code and to Respondent's lack of capacity to make a reasoned decision about her treatment. Psychiatrist gave undisputed testimony that he twice attempted to present Respondent with written information about her proposed psychotropic medications, but Respondent twice refused to accept the tenders and walked away. State met its burden of proof as to Respondent's lack of capacity, and court's Order was not against manifest weight of evidence. (HOFFMAN and LAMPKIN, concurring.)

In re Megan G., 2015 IL App (2d) 140148 (November 17, 2015) Lake Co. (McLAREN) Affirmed.
Petition asserted a claim under Section 3-600 of Mental Health Code, alleging that Respondent is subject to involuntary admission to a mental health facility and is in need of immediate hospitalization. As petition sets forth the required allegations, on its face, the petition alleges existence of a justiciable matter, and thus the court had subject matter jurisdiction. As court was procedurally limited from hearing matter while felony charges were pending, it properly dismissed petition for involuntarily admission. Respondent did not contest personal jurisdiction, and received proper notice, and her appointed counsel was present at the hearing on her motion to dismiss. Thus, the trial court had personal jurisdiction over Respondent. (SPENCE, concurring; JORGENSEN, specially concurring.)

People v. Bailey, 2016 IL App (3d) 150115 (February 10, 2016) Will Co. (O'BRIEN) Affirmed.
Court's determination that Defendant was in need of mental health services on inpatient basis, after finding of not guilty by reason of insanity on charge of aggravated battery, was not manifestly erroneous. Psychiatrist did not base his opinion solely upon finding of mental illness, but on Defendant's lack of insight into his mental illness and his history of noncompliance with his medications, and also past arrest and police records which showed history of criminal behavior. (LYTTON and WRIGHT, concurring.)

In re Miroslava P., 2016 IL App (2d) 141022 (March 30, 2016) Kane Co. (JORGENSEN) Affirmed.
State petitioned for involuntary admission of and involuntary administration of psychotropic medication to Resondent, a Bulgarian citizen. Court was authorized to take a strict-compliance approach and vacate admission order in light of State's noncompliance with Section 3-609 of Mental Health Code. Respondent had repeatedly asked the State to notify the Bulgarian consulate, as required by Vienna Convention. State initially refused to do so, and did noify the consulate several weeks later, but it did not include the admission petition. Court may reasonably have found the State's noncompliance to be inexcusable, regardless of prejudice. (SCHOSTOK, concurring; SPENCE, dissenting.)

In re Sharon H., 2016 IL App (3d) 140980 (April 15, 2016) LaSalle Co. (McDADE) Affirmed in part and reversed in part; appeal dismissed in part.
Court granted petitions for involuntary admission and for involuntary administration of medication. Two of Respondent's 4 claims on review are moot and are not excused by any applicable exception to mootness doctrine, and are thus dismissed as moot. Respondent' remaining 2 claims satisfy public interest exception to mootness doctrine. State failed to provide Respondent with required notice, as State did not serve medication petition on her at least 3 days prior to hearing. Court violated Mental Health Code by failing to specify in medication order what testing it was requiring to be conducted on Respondent. Thus, court's decision ordering psychotropic medication to be involuntarily administered to Respondent is reversed. Court failed to show prejudice necessary to establish ineffective assistance of counsel at admission hearing.(LYTTON and WRIGHT, concurring.)

JUDICIAL NEUTRALITY

People v. Wiggins, 2015 IL App (1st) 133033 (September 1, 2015) Cook Co., 2d Div. (NEVILLE) Reversed and remanded.
(Corrected; supplemental opinion upon denial of rehearing 11/3/15.) Defendant was convicted, after jury trial, of attempted murder. Judge improperly abandoned his role as neutral arbiter and his actions prejudiced the defense. Judge interposed objections on behalf of State, asked questions of victim designed to impeach victim's testimony, and made remarks indicating a preference for the State. Court abused its discretion when it permitted prosecution to read to jury the entirety of written statement of a witness, as witness signed statement after he had a motive to fabricate, as he had by then been identified as the shooter and was a prior consistent statement. (SIMON, concurring; LIU, dissenting.)

People v. Lopez, 2015 IL App (4th) 150217 (December 4, 2015) Livingston Co. (STEIGMANN) Reversed and remanded.
Court erred in dismissing traffic charges "for failure to proosecute" when, after Court waited for 15 minutes, State failed to appear at pretrial conference. Absent statutory authorization, or in case where court has an inherent authority to dismiss indictment where there has been a clear denial of due process, a trial court has no power before trial to dismiss criminal charges on its own motion or on motion of the defendant.(HARRIS and POPE, concurring.)

People v. Jackson, 2015 IL App (3d) 140300 (December 9, 2015) Rock Island Co. (CARTER) Affirmed.
Defendant was convicted of aggravated battery for repeatedly punching 4-year-old boy in the stomach, causing bruising to an organ in his abdomen. Although court erred in granting State's noncompliant motion to substitute judge, which was untimely filed and did not allege judge was

prejudiced, error was harmless as Defendant made no showing of prejudice. Court properly found child victim competent to testify; child's testimony did not establish that he was disqualified to be a witness under Section 115-14(b) of Code of Criminal Procedure.(McDADE, concurring; HOLDRIDGE, specially concurring.)

People v. McGuire, 2016 IL App (1st) 133410 (February 3, 2016) Cook Co., 3d Div. (MASON) Vacated and remanded.
After evidentiary hearing, court found that Defendant had violated terms of his probation on drug possession conviction and sentenced him to "sheriff's boot camp". One week later, court held "resentencing" hearing and sentenced him to 34 months plus 1 year mandatory supervised release (MSR). Record is lacking any explanation for resentencing hearing; neither State nor defense counsel informed court that Defendant had been sentenced to "boot camp" just one week prior.(FITZGERALD SMITH and LAVIN, concurring.)

JURY (deliberation / questions / structure)

People v. Downs, 2015 IL 117934 (June 18, 2015) Kane Co. (FREEMAN) Appellate court reversed; circuit court affirmed; remanded.
Defendant was convicted, after jury trial, of first degree murder. Appellate court erred in vacating conviction and remanding for new trial, concluding that trail court erred in response to jury questions. Circuit court correctly answered, "We cannot give you a definition; it is your duty to define it" when jury, during deliberations, sent note to court asking for definition of reasonable doubt. Term needs no definition because words themselves sufficiently convey its meaning. Defendant failed to show that a clear or obvious error occurred in response to jury's question.(THOMAS, KILBRIDE, KARMEIER, BURKE, and THEIS, concurring.)

People v. Peoples, 2015 IL App (1st) 121717 (June 30, 2015) Cook Co., 4th Div. (ELLIS) Affirmed in part and reversed and remanded in part with directions.
Defendant was convicted, after jury trial, of first-degree murder and two counts of attempted first-degree murder and sentenced to 70 years in prison. Evidence was sufficient to prove Defendant guilty beyond a reasonable doubt. Jury reached its guilty verdict in 5 minutes when court incorrectly told jury it could convict based on accountability theory, after jury sent note that they didn't have enough evidence that Defendant was the shooter. As possibility of jury lenity or compromise, or that the jury's error favored State, cannot be ruled out, conviction is reversed and case remanded for new trial. Court expressly addressed all factors in aggravation and mitigation at sentencing, except that Defendant was age 24 at time of sentencing.(FITZGERALD SMITH and HOWSE, concurring.)

People v. Mueller, 2015 IL App (5th) 130013 (July 17, 2015) Jackson Co. (MOORE) Reversed and remanded.
Defendant was convicted, after jury trial, of retail theft, and received extended-term four-year sentences. Testimony of retail store's loss prevention employee was weak, and police officer's testimony did not assist State. Court limited jury in manner it viewed store's video surveillance tape, and during deliberations jury sent specific note asking to see video and stating that it was too far away. Court refused jurors' requests to extend video to full screen and to play video again. Evidence was closely balanced, and judge's Rule 431(b) errors (in not asking jurors if they accepted that Defendant did not have to present any evidence or testify, and that if Defendant did not testify they could not hold it against him) prejudiced jury. (GOLDENHERSH and STEWART, concurring.)

People v. Johnson, 2015 IL App (3d) 130610 (December 10, 2015) Tazewell Co. (LYTTON) Affirmed.
Defendant was convicted of aggravated battery of a peace officer and resisting a peace officer resulting in injury. Court properly allowed video of incident to be played in the courtroom during deliberations, as video equipment was not available in jury room; video had viewed video twice during trial, and no presumption that third viewing was prejudicial. Evidence was sufficient to support convictions. Defendant was not denied effective assistance of counsel; decision to not have Defendant testify was matter of trial strategy. (WRIGHT, concurring; McDADE, disenting.)

JURY (instructions)

People v. Gashi, 2015 IL App (3d) 130064 (April 7, 2015) Henry Co. (LYTTON) Reversed and remanded.
(Court opinion corrected 4/24/15.) Defendant was convicted, after jury trial, of aggravated criminal sexual abuse. Court committed reversible error by telling jurors, during voir dire and after jury chosen but before trial began, that they could decide for themselves what "reasonable doubt" means.These statements sent an unconstitutional message to jurors that they had discretion to determine what "reasonable doubt" means. Based on totality of circumstances, reasonable likelihood that jury understood court's statements to allow them to find Defendant guilty based on standard of proof less than beyond a reasonable doubt. (McDADE, specially concurring; SCHMIDT, concurring in part and dissenting in part.)

People v. Walker, 2015 IL App (1st) 130500 (May 11, 2015) Cook Co.,1st Div. (CUNNINGHAM) Affirmed.
Defendant was convicted, after jury trial, of first degree murder and sentenced to 42 years. Whether Defendant was armed with a firearm was not submitted to jury as aggravating factor for

felony murder, and thus court erred in imposing 15-year firearm enhancement. Error was harmless, as evidence that Defendant was armed with a firearm at time he committed felony murder was uncontested and overwhelming. Court had statutory authority to impose firearm enhancement. (DELORT and HARRIS, concurring.)

People v. Torres, 2015 IL App (1st) 120807 (May 27, 2015) Cook Co., 1st Div. (HYMAN) Affirmed.
Defendant was convicted, after jury trial, of aggravated battery as a lesser-included offense of attempted murder, four counts of aggravated criminal sexual assault, and one count of aggravated kidnapping; and found not guilty of attempted murder. Court properly allowed State to adduce evidence of two earlier attacks by Defendant against victim within two months of charges. State's supplemental motion to allow other-crimes evidence provided adequate summary of evidence as required by statute. No error in court instructing jury as to elements of offense of aggravated criminal sexual assault, State's burden of proof, and presumption of innocence. (PUCINSKI and MASON, concurring.)

People v. Downs, 2015 IL 117934, (2nd Dist.) (June, 2015) SCT APPEAL
Appellate Court Reversed.
Defendant was convicted of murder. After retiring to deliberate, jury asked trial court question regarding definition of "reasonable doubt;" and questioned if it was "80%, 70%, 60%?". Trial court responded by stating "We cannot give you a definition; it is your duty to define." Appellate Court, in reversing defendant's conviction, found that trial court's directive constituted plain error, because it: (1) posed risk that jury used standard less than reasonable doubt when convicting defendant of murder charge; (2) evidence in case was closely balanced; and (3) jury's question demonstrated that it already was contemplating standard less than reasonable doubt. It is better to refrain from attempting to define reasonable doubt as the trial court did here – even where the jury itself suggests a percentage-based analysis. (GARMAN, concurrence by THOMAS, KILBRIDE, KARMEIR, BURKE & THEIS)

People v. Willett, 2015 IL App (4th) 130702 (August 4, 2015) Sangamon Co. (STEIGMANN) Reversed and remanded.
Defendant was convicted, after jury trial, of aggravated battery of a child; indictment alleged that he shook his 2-month-old daughter, causing brain injury. Court abused its discretion by refusing to instruct jury on lesser-included offense of reckless conduct. Court erred in allowing jury to render its decision based upon incorrect definition of "knowingly. (POPE and HOLDER WHITE, concurring.)

People v. Smith, 2015 IL App (4th) 131020 (December 4, 2015) Champaign Co. (HOLDER WHITE) Affirmed as modified and remanded with directions.
(Court opinion corrected 1/4/16.) Jury convicted Defendant of aggravated battery to a person over age 60 and intimidation, and sentenced him 6 concurrent terms of 5 years and 6 years. IPI

Criminal Jury Instructions do not accurately convey present law as to charge of aggravated battery to a person over age 60, as instructions do not include element added to offense by amendment in 2006, that State must prove that Defendant knew the victim was at least 60. Evidence of injuries to victim's face and witness testimony as to injuries was sufficient to support battery conviction for Defendant, who was victim's caregiver. Court did not err in answering jury's request for definition of "reasonable doubt" with "the definition of reasonable doubt is for the jury to determine." (HARRIS and APPLETON, concurring.)

People v. Mefford, 2015 IL App (4th) 130471 (December 3, 2015) Coles Co. (STEIGMANN) Affirmed.
Defendant was convicted, after jury trial, of first degree murder and robbery. State proved Defendant guilty beyond a reasonable doubt of first degree murder; autopsy showed that victim suffered at least 6 blunt force trauma blows to his face consistent with strikes from a fist.Jury could reasonably have concluded that sometime during his violent encounter with victim, who was frail and small, kn ew that blows he inflicted on victim created strong probability of death or great bodily harm; no specialized physiological knowledge was required to know that. Court's failure to instruct jury that IPI Criminal 7.15 also applied to involuntary manslaughter was not error. No error in admitting Defendant's statements, made in police interview, as to his criminal history, illicit drug use, and "going to jail all his life", as they were not used to argue propensity to commit crimes. (KNECHT and APPLETON, concurring.)

People v. Cacini, 2015 IL App (1st) 130135 (December 11, 2015) Cook Co., 5th Div. (LAMPKIN) Reversed and remanded.
Defendant was convicted, after jury trial, of attempted first degree murder of police officer and aggravated battery of another police officer. Court's failure to instruct jury on State's burden to disprove Defendant's justification for his use of force in self-defense was plain error. Court did not abuse its discretion in concluding after in camera inspection that confidential records of complaints against the arresting police officers were not admissible at trial or subject to disclosure. Court used proper review procedure and did not err in its decision as to remoteness and irrelevancy of information in OPS (Office of Professional Standards) files. As to 9 files of both officers that were not too remote in time, allegations of misconduct were completely distinct from present case, and all claims were unfounded or not sustained by sufficient evidence.(REYES and PALMER, concurring.)

People v. Jones, 2015 IL App (1st) 142597 (December 22, 2015) Cook Co., 2d Div. (HYMAN) Affirmed.
Defendant was convicted, after jury trial, of first-degree murder based on fatal traffic accident that occurred when he and co-defendant fled from residential burglary. DNA evidence, and other circumstantial evidence linking Defendant to car used in burglary, support verdict. Defendant was not entitled to additional language in jury instruction to state that Defendant could be found responsible only if death occurred before he reached a place of safety. Sentence

of 42 years not excessive, given nature of crime and Defendant's criminal history. Court considered mitigating factors of his parents' incarcerations and physical abuse he suffered when young. (PIERCE and NEVILLE, concurring.)

People v. Sago, 2016 IL App (2d) 131345 (February 10, 2016) Winnebago Co. (JORGENSEN) Affirmed.
Defendant was convicted of first-degree murder (felony murder) for shooting death of his cousin, who entered pizza restaurant while Defendant and 2 others, all with their faces covered, attempted to commit armed robbery of restaurant. Off-duty police officer, who was not in uniform, did not identify himself as officer, and was in restaurant waiting for pizza, fired several shots. Court within its discretion in instructing jury that an officer could, as a matter of law, react with deadly force to prevent death or great bodily harm to himself or others. Defendant put at issue reasonableness of officer's actions, as he was trying to show that actions were so outrageous they were not reasonably foreseeable. (HUTCHINSON and HUDSON, concurring.)

JURY (voir dire)

People v Jones, 2015 IL App (2d) 120717 (February 3, 2015) Winnebago Co. (SCHOSTOK) Affirmed in part and vacated in part.
Defendant was convicted, after jury trial, of 12 counts of first-degree murder, and attempted first-degree murder, 4 counts of home invasion, and residential burglary. Court properly determined that State did not commit a Batson violation in jury selection. Defense counsel objected to State's question of potential juror, who was black, about her "faith", and State exercised peremptory challenge as it believed that it could not question her further about subject (HUTCHINSON and BURKE, concurring.)

People v. Payne, 2015 IL App (2d) 120856 (March 9, 2015) Winnebago Co. (HUDSON) Affirmed.
Defendant was convicted, after jury trial, of aggravated vehicular hijacking and aggravated battery. State's use of peremptory challenges did not evince a discriminatory purpose, as potential jurors who were stricken all made comments which indicated they might not be impartial. As hearing on posttrial motion occurred more than three months after jury selection, prosecutor's lack of recall as to specific reason for striking potential juror does not establish that her stated reason was pretextual. Court's finding that State established a valid and race-neutral reason to exclude potential juror is not clearly erroneous. (SCHOSTOK and ZENOFF, concurring.)

People v. Sebby, 2015 IL App (3d) 130214 (April 27, 2015) LaSalle Co. (SCHMIDT) Affirmed. (Court opinion corrected 5/18/15.) Defendant was convicted, after jury trial, of resisting a peace officer. Court's question to potential jurors whether they had any "problems" with the Zehr principles of law failed to sufficiently comply with Rule 431(b), and constituted clear error.

Evidence was not so closely balanced that court's error warrants reversal under plain-error doctrine. Prosecutor's statement, "There are no statements made by any defense witnesses to any law enforcement about what happened that day.", is within bounds of acceptable argument, and was not a comment on Defendant's postarrest silence. (HOLDRIDGE, specially concurring; O'BRIEN, dissenting.)

People v. Williams, 2015 IL App (1st) 131103 (November 24, 2015) Cook Co., 2d Div. (HYMAN) Affirmed.
Defendant was convicted, after jury trial, of first degree murder, attempted murder, and aggravated battery with a firearm. Defense counsel did not carry burden of establishing prima facie case of purposeful discrimination in jury selection as required by Batson. Defense counsel's cross-examination of key eyewitness to shooting was not unfairly limited because court reversed its ruling to allow questions about an earlier shooting on the same day and same location. State proved beyond a reasonable doubt by credible eyewitnesses that Defendant was one of the shooters. The few inconsistencies in eyewitnesses' accounts, individually and together, do not usurp jury's role in resolving questions of fact and credibility of witnesses. (PIERCE and NEVILLE, concurring.)

JURY (waiver)

People v. Hollahan, 2015 IL App (3d) 130525 (May 6, 2015) Kankakee Co. (SCHMIDT) Affirmed and remanded with directions.
(Modified upon denial of rehearing 7/16/15.) Defendant was convicted, after bench trial, of two counts of domestic battery against two different women. Defendant's jury waiver, entered before his guilty plea was withdrawn, was still in effect at time of his bench trial. No error when court failed to obtain additional jury waiver after withdrawing Defendant's guilty plea. (CARTER and O'BRIEN, concurring.)

People v. Campbell, 2015 IL App (3d) 130614 (August 6, 2015) Peoria Co. (O'BRIEN) Reversed and remanded.
Defendant was convicted of criminal sexual assault after stipulated bench trial and sentenced to 15 years. Defendant's guilty plea included jury waiver, and when his plea was withdrawn, his jury waiver was also withdrawn. A jury waiver is "expended" when the waiver was part of a plea that was subsequently withdrawn. Court's admonishments were insufficient as they did not inform Defendant that he had a right to a jury trial and that be agreeing to stipulated bench trial, he was waiving his right to jury trial, and he was not informed of his reinstated jury trial rights prior to stipulated bench trial as required. Given insufficient admonishments, Defendant's jury waiver was not understandingly and knowingly made.(McDADE and CARTER, concurring.)

People v. Reed, 2016 IL App (1st) 140498 (January 27, 2016) Cook Co., 3d Div. (LAVIN) Affirmed.
(Court opinion corrected 2/25/16.) Defendant was convicted, after bench trial, of possession of a controlled substance with intent to deliver and sentenced to 9 years. Considering Defendant's written jury waiver, his colloquy with trial court, and his demonstrated familiarity with justice system, court did not err in finding that Defendant knowingly waived his right to jury trial. Court System fee of $50 is actually a fine. State's Attorney's Records Automation Fee of $2 is legally a fee. Public Defender Records Automation Fee is legally a fee. (MASON and FITZGERALD SMITH, concurring.)

JUVENILE

In re Shermaine S., 2015 IL App (1st) 142421 (January 9, 2015) Cook Co., 3d Div. (HYMAN) Affirmed.
Respondent minor, age 16 at time of offense, was convicted, after jury trial, of one count of robbery, and was sentenced as a habitual juvenile offender (based on two dispositions for burglary in two prior years) and sentenced to mandatory term of commitment to Department of Juvenile Justice until age 21. Based on Illinois Supreme Court precedent, mandatory sentencing provision of Juvenile Court Act does not violate eighth amendment or Illinois proportionate penalties clause. (PUCINSKI and LAVIN, concurring.)

In re: Edgar C., 2014 IL App (1st) 14-703 (December 31, 2014) Cook Co., 5th Div. (GORDON) Affirmed as modified.
(Court opinion corrected 1/22/15.) Respondent, age 16 at time of offense, was found guilty of robbery, theft and battery and adjudicated delinquent and sentenced to five years' probation. Mandatory five-year probation requirement applies to Respondent's adjudication, as robbery offense is a forcible felony. Mandatory probation requirement is rationally related to goals of Juvenile Court Act as it protects the public while allowing for individualized sentence. Juvenile robber is not treated more harshly than adult robber, as juvenile probation is only one year longer than maximum probation for adult, and minor cannot be committed to Department of Juvenile Justice for longer term than adult could be incarcerated for same offense, and juvenile commitment is inherently less harsh than adult incarceration. (McBRIDE and REYES, concurring.)

In re Henry B., 2015 IL App (1st) 142416 (January 26, 2015) Cook Co., 5th Div. (McBRIDE) Appeal dismissed.
Juvenile court judge continuing juvenile delinquency case for supervision contained no finding of guilty and no judgment order, and thus was not a final judgment. Order of supervision entered pursuant to Section 5-615 of Juvenile Court Act after a respondent minor's trial is not appealable.

Supreme Court Rule 604(b) applies only when sentence of supervision is entered under adult criminal code. (PALMER and GORDON, concurring.)

In re S.M., In re S.M. (February 4, 2015) Peoria Co. (WRIGHT) Reversed.
State charged Respondent minor with unlawful possession of a concealable handgun, under Section of Criminal Code which prohibits possession of concealable firearm or handgun for persons under age 18. State failed to present any evidence establishing "age" element of offense. Court erred in taking judicial notice of court record showing court's juvenile jurisdiction attached for matters involving minors under age 18. Court may take judicial notice of facts, sua sponte, only if judge makes clear before evidence is closed was facts and sources are included in sua sponte notice. Minor's unsworn statement of his age during arraignment cannot be used to meet State's burden of proof as to element of age. (LYTTON and O'BRIEN, concurring.)

People v. Baker, 2014 IL App (5th) 110492 (February 6, 2015) Fayette Co. (CATES) Affirmed in part and vacated in part; remanded with instructions.
Defendant, age 15 at time of offense, was convicted, after jury trial, of two counts of first degree murder and three counts of home invasion, and sentenced to two mandatory terms of natural life for murders, and 30 years for each home invasion. Two murders and home invasion at neighboring house arose out of same incident, and thus home invasion was properly prosecuted under criminal law in circuit court, even though that charge had not been transferred from juvenile court. Defense counsel's decision to forgo instructing jury on insanity was a matter of trial strategy, thus no ineffective assistance of counsel. Court properly limited opinions of defense neuropharmacologist expert to adverse effects of Cymblta (which Defendant had been prescribed) on adolescents in general, as he did not have qualifications required to offer expert opinion on issue of Defendant's sanity or mental illness. As no indication that court considered Defendant's youth and attendant characteristics, life sentences are vacated. (STEWART and MOORE, concurring.)

In re: Austin S., 2015 IL App (4th) 140802 (February 9, 2015) Adams Co. (STEIGMANN) Reversed.
County Juvenile Detention Center Treatment Program is "detention", within definition of detention in Section 5-105(5) of Juvenile Court Act. Thus, the Treatment Program's minimum 90-day length violates timing limitations of Section 5-710(1)(a)(v) of Juvenile Court Act. Sentencing Order, entered upon finding that Respondent minor violated terms of his probation, adding condition that minor successfully complete Treatment Program is void, as it violates 30-day limitation for detention under that Section of Act. (POPE and APPLETON, concurring.)

In re Henry B., 2015 IL App (1st) 142416 (January 26, 2015) Cook Co., 5th Div. (McBRIDE) Appeal dismissed.
(Court opinion corrected 3/16/15.) Juvenile court judge continuing juvenile delinquency case for supervision contained no finding of guilty and no judgment order, and thus was not a final

judgment. Order of supervision entered pursuant to Section 5-615 of Juvenile Court Act after a respondent minor's trial is not appealable. Supreme Court Rule 604(b) applies only when sentence of supervision is entered under adult criminal code. (PALMER and GORDON, concurring.)

People v. Baker, 2014 IL App (5th) 110492 (February 6, 2015) Fayette Co. (CATES) Affirmed in part and vacated in part; remanded with instructions.
(Modified upon denial of rehearing 3/17/15.) Defendant, age 15 at time of offense, was convicted, after jury trial, of two counts of first degree murder and three counts of home invasion, and sentenced to two mandatory terms of natural life for murders, and 30 years for each home invasion. Two murders and home invasion at neighboring house arose out of same incident, and thus home invasion was properly prosecuted under criminal law in circuit court, even though that charge had not been transferred from juvenile court. Defense counsel's decision to forgo instructing jury on insanity was a matter of trial strategy, thus no ineffective assistance of counsel. Court properly limited opinions of defense neuropharmacologist expert to adverse effects of Cymblta (which Defendant had been prescribed) on adolescents in general, as he did not have qualifications required to offer expert opinion on issue of Defendant's sanity or mental illness. As no indication that court considered Defendant's youth and attendant characteristics, life sentences are vacated. (STEWART and MOORE, concurring.)

People v. Cavazos, 2015 IL App (2d) 120171 (March 31, 2015) Kane Co. (JORGENSEN) Affirmed.
Defendant, then age 17, and his brother, then age 16, were convicted, after simultaneous juries in adult court, of first degree murder, attempted first-degree murder, and related offenses, in shooting death of 15-year-old boy and shooting injury of boy's girlfriend. Jury found that Defendant personally discharged semi-automatic weapon used in crimes, and sentenced him to aggregate 75 years. Jury could have reasonably concluded Defendant's intent to kill both persons, as they were walking closely together. Section 5-120 of Juvenile Court Act, which designates where juveniles are to be tried, and is not subject to and does not violate eights amendment or proportionate-penalties clause, as it is not a sentencing statute.(ZENOFF and BIRKETT, concurring.)

People v. Reyes, 2015 IL App (2d) 120471 (May 6, 2015) Kendall Co. (SCHOSTOK) Affirmed.
Defendant, then 16, was convicted of first-degree murder for shooting death of one victim, and attempted murder of two victims; jury found that Defendant personally discharged firearm as to all three offenses. Defendant's aggregate term-of-years sentence of 97 consecutive years imprisonment, based on multiple counts and multiple victims, does not violate eighth amendment. Automatic transfer statute does not violate eight amendment or due process. (BURKE and SPENCE, concurring.)

People v. Gipson, 2015 IL App (1st) 122451 (May 27, 2015) Cook Co., 3d Div. (LAVIN) Reversed and remanded.
Defendant was tried and sentenced as an adult for shooting incident at age 15. After automatic transfer from juvenile court to adult court, court found him unfit to stand trial but later determined he had been restored to fitness. Court found Defendant guilty of attempted first-degree murder of two persons, aggravated battery with a firearm and aggravated discharge of a firearm. As applied to Defendant, cumulative sentence of 52 years does not constitute a natural life sentence without possibility of parole, and thus Illinois' transfer and sentencing scheme does not violate eighth amendment. Defendant's sentence is so wholly disproportionate that it shocks the moral sense of the community and, as applied, automatic transfer statute in conjunction with sentencing scheme violates proportionate penalties clause. Reversed and remanded for retroactive fitness hearing.(PUCINSKI and MASON, concurring.)

In re Deshawn G., 2015 IL App (1st) 143316 (September 9, 2015) Cook Co., 3d Div. (FITZGERALD SMITH) Affirmed in part and vacated in part.
After jury trial, Respondent was adjudicated to be a violent juvenile offender (VJO) and sentenced to Department of Juvenile Justice until age 21, pursuant to mandatory sentencing provision of Juvenile Court Act which applies upon a minor's second finding of delinquency for an offense that, in an adult case, would have been a Class 2 or greater felony involving use or threat of physical force or violence, or which involves a firearm. Under the one-act, one-crime rule, Respondent should be adjudicated delinquent under a single count of AUUW statute. Possessing a firearm while under age 21 is more serious offense, and thus adjudication under that count remains, and adjudication under count for no FOID card count is vacated. VJO mandatory sentencing provision does not violate 8th amendment of U.S. Constitution nor proportionate penalties clause of Illinois Constitution.(HOWSE and COBBS, concurring.)

People v. Craighead, 2015 IL App (5th) 140468 (September 11, 2015) St. Clair Co. (GOLDENHERSH) Affirmed and remanded.
Defendant, age 16 at time of offense, was convicted of 1997 murders of two persons, after being tried as an adult. Court sentenced Defendant to natural life, pursuant to provision requiring mandatory natural life for any defendant, regardless of age at time of offense, found guilty of murdering more than one person. Lack of culpable negligence excused Defendant's 7-month delay in filing postconviction petition, and significant changes in state and federal law affected Defendant's initial petition, which remained pending in trial court for nearly 10 years. U.S. Supreme Court's 2012 decision in Miller v. Alabama, which holds that mandatory imposition of life sentence without parole on a person under age 18 at time of offense violates 8th amendment prohibition against cruel and unusual punishment, applies retroactively to cases on collateral review. (WELCH and CHAPMAN, concurring.)

People v. Pace, 2015 IL App (1st) 110415 (September 11, 2015) Cook Co., 6th Div. (DELORT) Affirmed in part and vacated in part; remanded with instructions.
(Modified upon denial of rehearing 10/16/15.) In 2007, Defendant, age 16 at time of offense, entered blind guilty plea to 1 count of first degree murder, 1 count of first degree murder with personal discharge of firearm that proximately caused death, and 2 counts of aggravated battery with a firearm. Defendant's case had been transferred to adult criminal court pursuant to automatic transfer provision of Juvenile Court Act. Court placed significant weight on improper aggravating factors in sentencing, including statements about judge's personal feelings about gang violence and statements that judge felt aligned with victims. Thus, remanded for resentencing before different judge. Judge did not abandon his role as neutral arbiter during hearing on Defendant's motion to vacate his guilty plea. Automatic transfer provision, and application of consecutive sentencing statute and firearm enhancement are not unconstitutional. Mittimus corrected from 2 to 1 count of murder, based on one-act, one-crime doctrine. (CUNNINGHAM and HARRIS, concurring.)

In re Q.P., 2015 IL 118569 (September 24, 2015) Peoria Co. (KILBRIDE) Appellate court reversed.
Minor was found guilty of obstructing justice for knowingly furnishing false information to a police officer with intent to prevent his own apprehension. Obstruction of justice statute is violated when a person knowingly provides false information with intent to prevent his seizure or arrest on a criminal charge. Minor gave false information about his identity shortly after he was placed in backseat of squad car, being apprehended for vehicle burglary. At that time, officer did not know about separate, unrelated juvenile warrant, and had not apprehended minor on that warrant. Officer learned of warrant only after transporting minor to police station. Evidence was sufficient to establish that minor committed offense of obstructing justice by knowingly furnishing false information with intent to prevent his apprehension on juvenile warrant.(GARMAN, FREEMAN, THOMAS, KARMEIER, BURKE, and THEIS, concurring.)

People v. Fiveash, 2015 IL 117669 (September 24, 2015) Cook Co. (KILBRIDE) Appellate court affirmed; remanded.
Defendant, age 23, was charged with aggravated criminal sexual assault and criminal sexual assault of his 6-year-old cousin, who lived in same residence, when Defendant was 14 or 15 years old. Section 5-120 of Juvenile Court Act does not bar prosecution of Defendant in criminal court for offenses allegedly committed when he was 14 or 15 but not charged with until he was over 21 and no longer subject to the Act. Under Section 3-6 of Code of Criminal Procedure, Defendant can be charged with her assault until victim turns age 28. By retaining limited authority of juvenile court while expanding State's available time frame for initiating prosecution of specified sex offenses, legislature allowed for criminal prosecution of youthful offenders who subsequently age out of juvenile court system. (FREEMAN, THOMAS, KARMEIER, BURKE, and THEIS, concurring.)

In re M.A., 2015 IL 118049 (November 4, 2015) Cook Co. (THOMAS) Appellate court affirmed in part and reversed in part; circuit court affirmed.
Juvenile Respondent, then age 13, inflicted cuts on her 14-year-old brother with a kitchen knife during argument over a missing shower cap.Respondent was adjudicated delinquent, including for aggravated battery and aggravated domestic battery, and was ordered to register under the Murderer and Violent Offender Against Youth Registration Act. That Act does not violate substantive due process, procedural due process, or equal protection.(GARMAN and KARMEIER, concurring; BURKE, FREEMAN, KILBRIDE, and THEIS, concurring.)

In re Michael D., 2015 IL 119178 (December 17, 2015) Cook Co. (THOMAS) Appellate court affirmed.
In a juvenile delinquency case, no Illinois Supreme Court Rules allow a minor to appeal an order continuing the case under supervision, when the order is entered after a finding of guilty. Order continuing respondent's case under supervision, although entered after a finding of guilty, was not a final, appealable order, and thus appellate court was without jurisdiction to consider appeal. (GARMAN, KILBRIDE, KARMEIER, and THEIS, concurring; BURKE, dissenting.)

People v. House, 2015 IL App (1st) 110580 (December 24, 2015) Cook Co., 4th Div. (McBRIDE) Affirmed in part and vacated in part; remanded.
Defendant was convicted, after jury trial, of 2 counts of first-degree murder and 2 counts of aggravated kidnapping, for his role as a lookout, on theory of accountability. Court properly dismissed Defendant's petition for postconviction relief at second stage. No newly discovered evidence which could not have been discovered with due diligence; and no showing of ineffective assistance of counsel. Mandatory natural life sentencing statute is unconstitutional as applied to Defendant. At time of offense in 1993, Defendant, at age 19 years and 2 months, was barely a legal adult and still a teenager. Young age, family background, and lack of violent criminal history are all relevant when considered along with his participation in shootings. (REYES, concurring; GORDON, concurring in part and dissenting in part.)

People v. Holman, 2016 IL App (5th) 100587-B (March 3, 2016) Madison Co. (CHAPMAN) Affirmed.
Defendant was convicted of murder of 83-year-old woman in her rural farmhouse, committed when Defendant was age 17, and in 1981 was sentenced to natural life in prison. Evidence in presentenced investigation report (PSI) included evidence related to Defendant's youth and the mitigating features of youth, and his low IQ and susceptibility to influence by peers. Ample aggravating evidence was presented. Court declined to decide whether 8th amendment requires a categorical bar on sentences of life without parole for any juvenile defendant. A natural-life sentence might still be appropriate on remand so long as the court has discretion to consider other sentences. (SCHWARM and MOORE, concurring.)

In re N.H., 2016 IL App (1st) 152504 (March 18, 2016) Cook Co., 5th Div. (GORDON) Affirmed.
Respondent minor appeals adjudication of delinquency and dispositional order of probation. Court found Respondent guilty of robbery and aggravated battery of an 18-year-old student , whom he pushed and then grabbed wallet from her hand.Court sentenced him to 5 years of probation. Court was within its discretion in ordering Respondent to maintain a "C average" in school as a condition of his probation. Mandatory probation requirement is rationally related to twin goals of the Juvenile Court Act as it protects the public, while still allowing for an individualized sentence. Minor reported grades of A's and B's, has no mental or physical health issues, and has a supportive family. Requirement does not challenge the integrity of the judicial process. (REYES, concurring; LAMPKIN, specially concurring.)

People v. Nieto, 2016 IL App (1st) 121604 (March 23, 2016) Cook Co., 3d Div. (LAVIN) Affirmed in part and vacated in part; remanded with directions.
(Court opinion corrected 4/5/16.) Defendant, then age 17, when a front-seat passenger with 3 other gang members, shot and killed 1 person, and injured another, when they allegedly used a sign disrespecting their gang. Jury convicted Defendant of first degree murder and aggravated battery with a firearm. Court sentenced Defendant to total 78 years. Per U.S. Supreme Court decision, state courts must give 2012 Miller v. Alabama U.S. Supreme Court decision, which bars life without parole for all but the rarest juvenile offender, effect in collateral proceedings as it is a substantive rule. Courts must consider a juvenile's special characteristics even when exercising discretion.Sentence is not likely to deter anyone, as deterrence is diminished in juvenile sentencing. Court failed to consider characteristics of Defendant's youth through lens of Miller decision. (MASON and PUCINSKI, concurring.)

JUVENILE (transfer \ ejj)

In re C.C., 2015 IL App (1st) 142306 (January 6, 2015) Cook Co., 4th Div. (ELLIS) Affirmed.
Respondent, age 14 at time of shooting, was convicted of first-degree murder for shooting death of 17-year-old. Respondent was sentenced to imprisonment in Department of Juvenile Justice until age 21, with mandatory minimum 45-year adult criminal sentence. Under extended jurisdiction juvenile (EJJ) statute, adult sentence stayed, to be vacated upon completion of juvenile sentence if no new offenses and no violation of conditions of juvenile sentence. As stay on Respondent's adult sentence has not been revoked and it is currently in no jeopardy of being revoked, he lacks standing at this time to challenge severity of his adult sentence, as his asserted injury is too remote to confer standing.(HOWSE and EPSTEIN, concurring.)

In re E.W., 2015 IL App (5th) 140341 (February 23, 2015) St. Clair Co. (WELCH) Affirmed in part as modified; reversed in part and remanded.
Respondent minor, age 15 at time of offense, was adjudicated delinquent after entering fully negotiated guilty plea to criminal sexual assault, and was sentenced to five years probation. Respondent then entered open plea for adult portion of EJJ (extended jurisdiction juvenile) prosecution, and court entered 15-year conditional adult sentence, stayed pending successful completion of juvenile sentence. In adult portion of plea, conversation between court and counsel, not with Respondent, as to whether he had understood that he was waiving jury, and was not asked if he wished to persist in his plea. Respondent's postconviction petition set forth "gist" of a constitutional claim that his guilty plea was not knowing and voluntary. Respondent was given adequate notice that conditional adult sentence could be imposed if he violated condition of probation.(CHAPMAN and SCHWARM, concurring.)

People v. Brown, 2015 IL App (1st) 130048 (April 20, 2015) Cook Co.,1st Div. (HARRIS) Affirmed as modified; mittimus corrected.
Defendant, age 16 at time of offense, was tried as an adult pursuant to mandatory transfer provision of Juvenile Court Act, and was convicted, after jury trial, of aggravated battery with a firearm and three counts of attempted first degree murder. Court merged convictions into one count for attempted first degree murder and sentenced him to 50 years imprisonment, consisting of 25-year term for attempted first degree murder and 25-year sentencing enhancement for personally discharging a firearm that proximately caused great bodily harm to another. State presented sufficient evidence to support sentencing enhancement imposed by showing that Defendant caused great bodily harm. Mandatory transfer provision of Juvenile Court Act is constitutional. Court abused its discretion when, in determining sentence, relied on speculative evidence, and where sentence failed to satisfy constitutional objective of restoring Defendant to useful citizenship. Sentence for attempted first degree murder is reduced to 6 years, with 25-year enhancement.(DELORT and CUNNINGHAM, concurring.)

People v. Banks, 2015 IL App (1st) 130985 (June 30, 2015) Cook Co., 5th Div. (McBRIDE) Affirmed.
Defendant, after bench trial, was convicted of first degree murder and sentenced to 45 years in prison. Automatic application of mandatory minimum sentence of 45 years for a juvenile Defendant and statute providing for automatic transfer to adult court for a juvenile Defendant charged with first degree murder do not violate eighth amendment of U.S. Constitution or proportionate penalties clause of Illinois Constitution.Court had opportunity to consider factors in aggravation and mitigation, including age.(PALMER and REYES, concurring.)

People v. Nelson, 2016 IL App (4th) 140168 (March 10, 2016) Sangamon Co. (KNECHT) Affirmed in part and vacated in part; remanded with directions.
Defendant was convicted, after jury trial, of 3 counts of first degree murder. In physical altercation with another male, Section 5-130 of Juvenile Court Act, providing for automatic

transfer to adult criminal court, does not violate 8th Amendment. (STEIGMANN and APPLETON, concurring.)

JUVENILE (abuse & neglect)

In re A.T., 2015 IL App (3d) 140372 (January 13, 2015) Tazewell Co. (McDADE) Affirmed. After finding of neglect and dispositional hearing, court found Respondent mother unfit to care for her minor child. Dispositional report support conclusion, as mother had made several threats to kill minor, is and exhibited actual conduct supporting finding of unfitness. (O'BRIEN and WRIGHT, concurring.)

In re M.M., 2015 IL App (3d) 130856 (January 23, 2015) Peoria Co. (HOLDRIDGE) Reversed and remanded.
(Modified upon denial of rehearing 9/2/15.) Court failed to comply with Juvenile Court Act's mandatory prerequisites for placing children with DCFS, which requires that a court may place a child outside parental home only if court makes factual determination that parent is either unfit, unable, or unwilling to care for the child, and puts in writing explicit factual basis supporting the determination. Thus, court committed reversible error in awarding custody of children to DCFS. Appellate court may not presume that trial court made such findings implicitly based on strength of evidence. (LYTTON and CARTER, concurring.)

L.F. v. The Department of Children and Family Services, 2015 IL App (2d) 131037 (March 11, 2015) Lake Co. (BURKE) Reversed with directions.
DCFS failed to meet its burden of proof to show that a preponderance of evidence supported its indicated report of child neglect due to inadequate supervision. Director of DCFS erred in denying Plaintiff mother's request to expunge indicated finding. There was no evidence that Plaintiff's use of K3 (synthetic marijuana) rendered her unable to adequately supervise her 6-year-old son. DCFS failed to refute Plaintiff's testimony that she could still function after using K3, and failed to present evidence that her use of K3 produced substantial state of stupor, unconsciousness, or irrationality so that she was unable to adequately supervise her son. (HUTCHINSON and BIRKETT, concurring.)

In re N.T., 2015 IL App (1st) 142391 (April 10, 2015) Cook Co., 5th Div. (GORDON) Affirmed. Court's order terminating Respondent's parental rights to her four-year-old daughter, and finding that termination was in best interest of minor, was not against manifest weight of evidence. Respondent was not denied a fair hearing because court properly informed maternal grandmother, with whom minor was placed, as to the law when cautioning her that adoption was favored over guardianship. Court was not acting as advocate by asking four questions of maternal grandmother during best interest hearing. Respondent was not entitled to hearing on her fitness to stand trial prior to termination proceedings. (McBRIDE and REYES, concurring.)

In re M.S., 2015 IL App (4th) 140857 (April 14, 2015) Vermilion Co. (HARRIS) Reversed.
Minors were placed in relative foster care, and court held DCFS and its agent, LSSI, in contempt for not having immediately removed minors from foster home after grandfather had positive drug test. Court Record fails to reflect existence of a clear order upon which juvenile court could base its contempt finding against Respondents. Even assuming that court order existed requiring Respondents to remove minors from their foster placement, removal was completed prior to date court issued its rule to show cause and before it held Respondents in civil contempt, and thus there was not action for court to coerce at time contempt proceedings began. Court's order improperly punished Respondents for actions which they could not undo, and due process requirements for indirect criminal contempt were not met. (KNECHT and APPLETON, concurring.)

In re Audrey B., 2015 IL App (1st) 142909 (April 30, 2015) Cook Co., 4th Div. (HOWSE) Affirmed.
After dispositional hearing, court adjudged minor a ward of court, and placed minor in custody and guardianship of DCFS. Court did not use "constellation of injuries" theory when it based its decision on fact that minor's symmetrical bilateral forearm injuries were difficult to explain. Court based its decision on testimony and relative credibility of expert witnesses.Court's findings of physical abuse and medical neglect were not against manifest weight of evidence. (ELLIS and COBBS, concurring.)

In re Marianna F.-M., 2015 IL App (1st) 142897 (May 8, 2015) Cook Co., 5th Div. (McBRIDE) Reversed in part and vacated in part; remanded.
Court entered order, after adjudicatory hearing and same-day dispositional hearing, finding that father of minor, then age 6, was fit, wiling, and able to parent minor, and returned minor home to him under order of protective supervision. Finding was against manifest weight of evidence, as court concluded that minor was abused due to excessive corporal punishment and substantial risk of physical injury caused by father, based on physician's opinion that her injuries were nonaccidental and her bruising was inconsistent with father's explanation for injuries. Father made insufficient progress in therapy to parent minor.(PALMER and GORDON, concurring.)

In re S.W. and S.W. , 2015 IL App (3d) 140981 (May 26, 2015) Peoria Co. (SCHMIDT) Affirmed.
After court found Respondent mother's two minor children neglected, court within its discretion in denying Respondent mother's motions to continue, and in proceeding with fitness hearing after discharging her final appointed attorney who had stated he was ready to proceed to fitness hearing, and in conducting best interests hearing in Respondent's absence but with prior notice to her. Respondent fired all four of her court-appointed attorneys, each time expressing her dissatisfaction with their representation, and Respondent stated that she would find private counsel but failed to do so. (McDADE and LYTTON, concurring.)

In re S.B., 2015 IL App (4th) 150260 (August 24, 2015) Adams Co. (APPLETON) Reversed and remanded.
Court entered adjudicatory orders finding Respondent mother's 3 children to be neglected, and dispositional orders making children wards of the court. Mother was being transported to hearing from prison but transport vehicle arrived 50 minutes late due to heavy snowfall. Respondent mother's attorney was present, but mother was not present when case, set for 9 a.m., was called at 9:35 a.m. and proceeded over objection of mother's attorney. In these circumstances, court erred in denying continuance to await mother's arrival from prison. (HARRIS and HOLDER WHITE, concurring.)

In re M.H., 2015 IL App (4th) 150397 (September 28, 2015) Vermilion Co. (APPLETON) Affirmed.
Court terminated Respondent father's parental rights to his daughter. Court's factual findings, that Respondent was an unfit person and that terminating his parental rights were in the best interest of the minor, were not against manifest weight of evidence. Minor was born when Respondent was in jail, awaiting trial, and never has had any contact with her. Foster mother has established relationship with minor, and is knowledgeable about complicated medical problems of minor, who was born with cannabis and alcohol in her system. (TURNER and STEIGMANN, concurring.)

In re Davon H., 2015 IL App (1st) 150926 (October 30, 2015) Cook Co., 5th Div. (PALMER) Affirmed.
Following adjudication and disposition hearings, court terminated parental rights of Respondent mother to her 3 children, and found children abused and neglected, Respondent to be unfit, found Respondent should not be allowed visitation, and it was in best interests of children that a guardian with right to consent to their adoption be appointed. Children's father had previously admitted to hitting one child's twin brother, who died at 8 months old from cerebral edema due to skull fracture from multiple blunt force injuries, and was convicted of murder.Respondent allowed children to be beaten, failing to notice their injuries and pain, and continued to deny any responsibility for their injuries.Court's findings were not against manifest weight of evidence. Court was within its discretion in denying visitation and in admitting independent expert witness testimony. Requirement that State disclose basis for each opinion applied only to controlled experts. Expert's opinion that injuries of deceased child were fresh was not a new opinion, as in expert discovery responses expert's opinions included that child sustained acute blunt trauma, which means that injuries were recent.(LAMPKIN and GORDON, concurring.)

In re S.K.B., 2015 IL App (1st) 151249 (November 10, 2015) Cook Co., 2d Div. (SIMON) Affirmed.
Court found both natural parents to be unfit; and found that it was in best interests of child to terminate both parents' parental rights and to appoint a guardian with right to consent to adoption

of the minor. Court considered all factors required by Juvenile Court Act, with detailed explanations for findings. Judgment was not against manifest weight of evidence.Court properly weighed minor's attachment to his foster mother and that minor, although young indicated that he wants to be adopted by his foster mother. (PIERCE and NEVILLE, concurring.)

In re M.I., 2015 IL App (3d) 150403 (November 20, 2015) Peoria Co. (O'BRIEN) Reversed and remanded.
Court erred in finding Respondent father unfit to care for his daughter and that it was in best interest of minor that his parental rights be terminated. Court's findings on both grounds (failure to make reasonable progress toward return home, and failure to maintain reasonable degree of interest or concern for minor's welfare were against manifest weight of evidence. Failing to complete a task beyond one's intellectual capacity is not the same as refusing to comply with court-ordered directives and willfully failing to make reasonable efforts or maintaining reasonable degree of interest in child. Court was required to consider father's conduct in light of circumstances facing him, and no modifications to services were made to allow father to be compliant with tasks given his intellectual deficits. Finding of unfitness does not necessarily mean that parental rights should be terminated. (McDADE, concurring; SCHMIDT, dissenting.)

In re Zion M., 2015 IL App (1st) 151119 (December 17, 2015) Cook Co., 4th Div. (HOWSE) Affirmed.
Petition alleging abuse and neglect filed 5 days after birth of Respondent mother's 5th child. One of her children had, 2 months prior, found a gun in the home, owned by mother's boyfriend, and shot and accidentally killed his sibling. There is nothing in the record to suggest that mother abused or neglected child. Evidence that mother has not done everything social services requires of her to regain custody of her other children is not determinative. Just as prior abuse or neglect of a sibling does not per se establish neglect of another sibling, "a prior finding of unfitness does not prove per se neglect." Court properly found that State had not proved abuse or neglect by a preponderance of the evidence under a theory of anticipatory neglect. (ELLIS and COBBS, concurring.)

In re Jordyn L., 2016 IL App (1st) 150956 (January 20, 2016) Cook Co., 3d Div. (FITZGERALD SMITH) Affirmed.
Evidence was sufficient to support court's finding that minor was neglected and abused, as child was neglected due to injurious environment and abused due to substantial risk of physical injury. Mother refused to entrust minor with services offered through UCAN and DCFS, and instead entrusted minor with her mother and grandmother, who had abused and neglected her and her siblings when she was a minor; and mother consistently failed to participate in services assigned to her. (MASON and LAVIN, concurring.)

In re Adam B., 2016 IL App (1st) 152037 (January 26, 2016) Cook Co., 2d Div. (SIMON) Affirmed.
Court's findings that Respondent mother's three minor children were abused and neglected were not against manifest weight of evidence. Court heard evidence including that mother delayed seeking medical treatment for one child's burn on his leg; and that mother was noncompliant with services; and that mother could not explain bruise on one child or the burn on the other child's leg. State was not required to show that each minor had already been harmed, to prove its allegations of abuse and neglect. (NEVILLE and HYMAN, concurring.)

In re D.M., 2016 IL App (1st) 152608 (March 10, 2016) Cook Co., 4th Div. (HOWSE) Affirmed.
Court properly adjudicated two minor siblings wards of the State; siblings' half-sister reported that their father had sexually abused her multiple times over several years, and father confessed to abusing half-sister while 2 siblings were in his custody and living in his home. Thus, evidence was sufficient to prove allegations of petitions by preponderance of evidence in video recorded statement to the police. As father does not argue that substance of his video recorded statement was inaccurate, his argument that statement was inadmissible hearsay and that no proper foundation was laid to admit video fails. (McBRIDE and COBBS, concurring.)

In re Harriett L.-B, 2016 IL App (1st) 152034 (March 9, 2016) Cook Co., 3d Div. (FITZGERALD SMITH) Affirmed.
Court properly entered adjudicatory order finding that infant was neglected due to injurious environment based on anticipatory neglect, and dispositional order finding that mother is unable and unwilling to parent infant at this time. Mother tested positive for marijuana at time of birth, had little prenatal care, and was often noncompliant with her medications. Whatever mother's medically related constitutional rights are (including to refuse medical treatment for her epilepsy and seizures, resulting in repeated grand mal seizures), they do not override infant's rights to a safe and nurturing environment. Court properly applied doctrine of anticipatory neglect, as basis for finding of neglect due to injurious environment, which is a method to protect children who are direct victims of neglect or abuse, and also to protect children with probability of being subject to neglect or abuse for a person who has neglected or abused another sibling child.(LAVIN and PUCINSKI, concurring.)

KIDNAPPING

People v. Johnson, 2015 IL App (1st) 123249 (January 28, 2015) Cook Co., 3d Div. (MASON) Affirmed.
(Court opinion corrected 2/17/15.) Defendant was convicted of aggravated kidnapping and aggravated criminal sexual assault. Rational trier of fact could have found independent offense of kidnapping under asportation theory, and that offense was not merely incidental to offense of criminal sexual assault. Defendant assaulted victim but put his arm around her neck, choking her, and twice moved her to more secluded area, both which increased danger to victim. State's analogy to car accident with no visible signs of injury was in response to remarks made by defense counsel in closing argument; thus, no prejudice in defense counsel failing to object to analogy. Trial judge emphatically stating "sustained" in response to its own objection to defense counsel's argument for jury not to compomise was not material factor in conviction. (LAVIN and HYMAN, concurring.)

LESSER-INCLUDED

People v. Sumler, 123381 (February 11, 2015) Cook Co., 4th Div. ((FITZGERALD SMITH)) Affirmed in part and vacated in part.
Defendant was convicted, after jury trial, of aggravated kidnapping, violation of order of protection, and domestic battery. Defendant's conviction for domestic battery should be vacated as a lesser-included offense of aggravated kidnapping. Court considered proper aggravating and mitigating factors prior to imposing a sentence. (HOWSE and COBBS, concurring.)

People v. Hicks, 2015 IL App (1st) 120035 (March 5, 2015) Cook Co., 4th Div. (ELLIS) Affirmed.
Defendant was charged with armed robbery, and was convicted, after jury trial, of robbery of candy store. Evidence showed that Defendant grappled with cashier when he took money from cash register and thus used "force" sufficient to convict him of offense of robbery. Court did not err in sua sponte instructing jury as to lesser-included offense of robbery. No ineffective assistance of counsel in defense counsel's failure to define force, as no pattern jury instruction defines force, and outcome of trial would likely not have changed even if force was defined. (FITZGERALD SMITH and COBBS, concurring.)

People v. Lee, 2015 IL App (1st) 132059 (September 24, 2015) Cook Co., 4th Div. (ELLIS) Reversed and remanded.
Defendant was convicted, after jury trial, of 4 counts of aggravated cruelty to a companion animal, after 4 horses were found in deplorable conditions in a barn. Evidence was sufficient to find Defendant guilty of aggravated cruelty beyond a reasonable doubt, with evidence of gross deprivation of food and water, humane treatment, and veterinary care. Court committed

reversible error by failing to instruct jury on lesser-included offense of violation of owner's duties statute. There was no evidence that Defendant was on the property during time at issue, and jury reasonably could have accepted Defendant's argument that he was an absentee, unknowing owner, and thus lacked requisite intent. (HOWSE and COBBS, concurring.)

People v. Collins, 2015 IL App (1st) 131145 (September 16, 2015) Cook Co., 3d Div. (LAVIN) Affirmed in part and vacated in part.
(Court opinion corrected 10/8/15.) Defendant was convicted, after jury trial, of possession of controlled substance and possession of a controlled substance with intent to deliver, and was sentenced as a habitual criminal to natural life. Court properly denied Defendant's motion to quash arrest and suppress evidence, and Defendant cannot show that his sentence is unconstitutional. Conviction for possession of controlled substance is vacated as it is a lesser-included offense of possession with intent to deliver. Evidence at motion to suppress hearing did not show that any conduct of officer unreasonably prolonged encounter. Officer testified that he found Defendant's explanation of his route illogical, creating additional suspicion. It was reasonable for officer to ask whether Defendant had narcotics in car, upon learning that Defendant was on MSR for possession of cocaine conviction. (PUCHINSKI, concurring; HYMAN, dissenting in part.)

People v. Johnson, 2015 IL App (1st) 141216 (December 23, 2015) Cook Co., 5th Div. (GORDON) Modified and remanded.
Defendant was convicted, after bench trial, of aggravated robbery as a lesser-included offense of armed robbery, and other offenses. Evidence adduced at trial does not support defendant's conviction for aggravated robbery beyond a reasonable doubt. State requested a lesser-included offense conviction of "robbery" only, never mentioning aggravated robbery. Convicting Defendant of the uncharged offense of aggravated robbery that is not a lesser-included offense of the charged offense of armed robbery violates defendant's "fundamental due process right" and affects fairness of Defendant's trial. Aggravated robbery is not a lesser-included offense of armed robbery. Thus, conviction reduced to simple robbery, and remanded for resentencing. (REYES and PALMER, concurring.)

People v. Green, 2016 IL App (1st) 134011 (March 7, 2016) Cook Co., 1st Div. (HARRIS) Affirmed in part and reversed in part; remanded.
Defendant was convicted, after jury trial, of aggravated battery with a firearm and unlawful use of a weapon by a felon, after shooting, with a gun concealed in his front pants pocket, a man who refused to shake hands with him outside a bar. Court properly refused to instruct jury on lesser-included offense of reckless conduct, as evidence does not support that theory; Defendant shot at man twice through his pants pocket, and only afterward, during a struggle, was man shot when gun fired a third time. Remanded to correct fines, fees, and costs, and to correct mittimus to reflect a single conviction in accordance with court's merger order. (LIU and CUNNINGHAM, concurring.)

People v. Clark, 2016 IL 118845 (March 24, 2016) Cook Co. (KARMEIER) Appellate court affirmed.
(Court opinion corrected 4/8/16.) Defendant was charged with multiple offenses, including aggravated vehicular hijacking while armed with a firearm and armed robbery while armed with a firearm, for accosting a man who was parking his vehicle in his garage, taking it from him. Plain language of Sections 18-2(a)(1) and 18-4(a)(3) of Code of Criminal Procedure explicitly excludes possession or use of a firearm. Thus, a violation of Sections of Code for offenses committed with firearms and those Sections for offenses committed with weapons other than firearms are mutually exclusive. Although Defendant was acquitted of the charged firearm offenses, he stands convicted of and sentenced for uncharged offenses he did not commit. Improper convictions and sentences are corrected via remedial application of plain error.Convicting a defendant of an uncharged offense that is not a lesser-included of offense of a charged offense violates a defendant's due process right to notice of the charges against him.Appellate court properly reduced degree of convictions to lesser-included offenses of vehicular hijacking and robbery and remanded for resentencing. (GARMAN, FREEMAN, THOMAS, KILBRIDE, BURKE, and THEIS, concurring.)

People v. Higgins, 2016 IL App (3d) 140112 (March 24, 2016) LaSalle Co. (SCHMIDT) Affirmed.
Defendant was convicted, after jury trial, of unlawful delivery of a controlled substance. Court was not required to admonish Defendant of the risks associated with admitting he delivered heroin as soon as that strategy became clear to the court. A trial court need only inquire into defense counsel's advice as to potential penalties associated with a lesser-included offense if defense counsel actually tenders the lesser-included offense instruction. Court should not interfere with what might be a defense strategy and need not give generalized admonishments to the defendant. Court was not required to ensure that Defendant agreed with decision not to object to State's tender of instruction. Defendant failed to show that 12-year sentence is manifestly disproportionate to nature or offense or that it is greatly at variance with spirit or purpose of law.(McDADE and WRIGHT, concurring.)

MURDER-

People v. Balfour, 2015 IL App (1st) 122325 (March 18, 2015) Cook Co., 3d Div. (LAVIN) Affirmed.
(Modified upon denial of rehearing 5/6/15.) Defendant was convicted, after jury trial, of first-degree murder of three members of his wife's family, and related charges. State offered substantial evidence of Defendant's role in murders, and of his many prior threats. Absence of forensic evidence unequivocally tying Defendant to murders does not necessarily equate to reasonable doubt. (PUCINSKI and HYMAN, concurring.)

People v. Pollard, 2015 IL App (3d) 130467 (June 2, 2015) Peoria Co. (CARTER) Affirmed.
(Court opinion corrected 6/11/15.) Defendant was convicted, after bench trial, of first degree murder, involuntary manslaughter, and endangering the life or health of a child, relating to death of her two-month-old son, and sentenced to 29 years. Infant's death was due to malnutrition and dehydraytion due to neglect, with prematurity a contributing factor.Evidence was sufficient to establish that Defendant acted with "knowledge" that her acts created strong probability of death or great bodily harm to infant, as she failed to follow hospital's instructions on feeding, positioning, and monitoring infant.(SCHMIDT, concurring; McDADE, dissenting.)

People v. Brown, 2015 IL App (1st) 134049 (June 22, 2015) Cook Co., 1st Div. (CUNNINGHAM) Affirmed in part and vacated in part; remanded.
Defendant was convicted of 7 counts of first degree murder, including 2 counts of knowing murder and 5 counts of felony murder. Innocent bystander was struck by bullet from nearby gunfight in 2007, and was rendered quadriplegic and was dependent on ventilator, and died in 2010. As victim had not yet died at time of trial, double jeopardy did not preclude 2013 murder prosecution after victim had died. State was estopped from prosecuting Defendant for intentional first degree murder after his 2009 acquittal for attempted murder. Collateral estoppel effect did not preclude charges of knowing or felony murder. Directed verdict in Defendant's favor on charges of aggravated battery with a firearm and aggravated discharge of a firearm indicates finding of insufficient evidence that Defendant knowingly fired in direction of victim or caused victim's injury. Thus, collateral estoppel precludes first degree murder conviction. (DELORT and CONNORS, concurring.)

People v. Carlisle, 2015 IL App (1st) 131144 (June 30, 2015) Cook Co., 5th Div. (GORDON) Affirmed.
Defendant was convicted, after jury trial, of attempted first-degree murder, aggravated battery with a firearm, and aggravated discharge of a firearm after he used sawed-off shotgun to shoot one two police officers. No error in refusing to admit testimony of defense expert that shotgun was not dangerous, as guns are per se deadly weapons, and testimony was not relevant to proving first element of attempted murder, a "substantial step"; and was not relevant to whether Defendant intended to commit murder, as expert could not testify as to what Defendant knew

about shotgun's capabilities after the offense. As evidence of Defendant's guilt was overwhelming, Defendant could not show reasonable probability that outcome would have been different if defense counsel had introduced officers' previous statements into evidence. Thus, Defendant could not show ineffective assistance of counsel. (PALMER and REYES, concurring.)

People v. Lengyel, 2015 IL App (1st) 131022 (August 5, 2015) Cook Co., 3d Div. (HYMAN) Reversed and remanded.
Defendant, then age 22 who lived in a one-bedroom apartment with his father, then age 55, got into verbal altercation and then physical altercation with his father. Defendant punched his father with his fists; he died two days later after suffering a stroke. Proof failed to sufficiently establish beyond a reasonable doubt that Defendant knowingly or intentionally killed his father. Defendant acted recklessly, so his actions were involuntary manslaughter, not second-degree murder.(PUCINSKI and MASON, concurring.)

People v. Ivy, 2015 IL App (1st) 130045 (August 6, 2015) Cook Co., 4th Div. (ELLIS) Reversed in part and affirmed in part.
Shooting outside apartment building left one person dead and three injured. Defendant was one of at least three shooters present. After bench trial, Defendant was convicted of first-degree murder of one person and attempted murder of three persons, and sentenced to combined 120 years. No evidence at trial proved that one injured person was shot by someone acting in furtherance of common criminal design shared by Defendant and other shooters at scene. Thus, Defendant's conviction of attempted murder of that one person, based on accountability theory, is reversed. Although two witnesses, who had identified Defendant, to police and to grand jury, as the man who shot the one person who died, recanted at trial, trial court was better-positioned to assess credibility of those statements versus their prior statements. Defendant's murder conviction affirmed.(FITZGERALD SMITH and COBBS, concurring.)

People v. Glazier, 2015 IL App (5th) 120401 (August 20, 2015) Perry Co. (CATES) Affirmed and remanded.
Defendant, age 17 at time of offense, was convicted, after stipulated bench trial, of first-degree murder of 15-year-old victim and was sentenced to 60 years. Evidence was sufficient to establish Defendant's intent to kill. Although Defendant choked victim, and another person shot victim and then threw her body in river, Defendant's acts caused, or at least contributed to, victim's death. Juveniles have no constitutional or common law right to adjudication in juvenile court.(GOLDENHERSH and CHAPMAN, concurring.)

People v. Casciaro, 2015 IL App (2d) 131291 (September 9, 2015) McHenry Co. (ZENOFF) Reversed.
Defendant was convicted, after 2013 jury trial, of felony murder predicated on intimidation of 17-year-old who disappeared in 2002, having been last seen at grocery store co-owned by

Defendant's father where victim worked. Defendant was "unofficial manager" of stock boys there. State claimed that evidence proved that another stock boy committed intimidation as a principal, acting on behalf of Defendant. Jury trial in 2012 resulted in mistrial after jury failed to reach a verdict. No rational trier of fact could have found that State proved predicate forcible felony of intimidation beyond a reasonable doubt. Victim's body has never been recovered, and evidence against Defendant was so lacking and so improbable that it is unreasonable to sustain finding of guilt beyond a reasonable doubt. (HUTCHINSON and SPENCE, concurring.)

People v. Harmon, 2015 IL App (1st) 122345 (December 30, 2015) Cook Co., 3d Div. (PUCINSKI) Affirmed.
(Court opinion corrected 1/25/16.) Defendant, age 18 at time of offense, was convicted, after bench trial, of first degree murder and sentenced to 65 years. Defendant shot victim in alleged self-defense or defense of others after the victim punched one of his friends while on a public way. State proved beyond a reasonable doubt that Defendant was not acting in self-defense or defense of others from death or great bodily harm. Defendant's use of deadly force was not justified to prevent commission of a forcible felony. Defendant failed to show mitigating factors for reduction of conviction. Court erred in not allowing any questioning of a prosecution witness as to potential bias from hope of deal with State for pending charges, but error was harmless as testimony of other witnesses corroborated his testimony. Court properly sustained objections to defense counsel's questions as to what Defendant thought would happen during incident, and Defendant otherwise testified extensively to his state of mind. Sentence not in error, as court considered all relevant mitigating and aggravating factors. (FITZGERALD SMITH, concurring; MASON, specially concurring.)

People v. Lefler, 2016 IL App (3d) 140293 (January 21, 2016) Knox Co. (CARTER) Affirmed in part and vacated in part.
Defendant was convicted, after jury trial, of second degree murder, unlawful possession of a weapon by a felon, and attempted burglary. Conviction for attempted burglary was erroneous, as this was predicate offense for felony murder conviction and is thus a lesser included offense. Jury verdicts were not legally inconsistent and court did not err in finding no statutory mitigating factors applicable to Defendant. That jury found a mitigating factor to exist in present case would have no bearing on its finding that Defendant was also guilty of felony murder, as felony murder may not be mitigated to second degree murder. (HOLDRIDGE and McDADE, concurring.)

People v. Nibbe, 2016 IL App (4th) 140363 (February 10, 2016) Ford Co. (TURNER) Reversed and remanded.
Defendant was convicted, after jury trial, of second degree murder and aggravated battery (public way), and not guilty of aggravated battery (great bodily harm). Defendant struck victim in the face with his fist, causing victim to fall and fracture his skull, which caused his death. Death is not ordinarily contemplated as a natrual consequence of blows from bare fists. Victim

was not substantially smaller or weaker thank Defendant, and victim died from his head striking the concrete, and not from blow to face. Conviction for second degree murder vacated, and remanded for sentencing for aggravated battery (public way). State presented evidence that negated Defendant's self-defense claim, sufficient for jury to find guilty beyond a reasonable doubt of aggravated battery. (HARRIS and HOLDER WHITE, concurring.)

OBSTRUCTION OF JUSTICE / RESIST

People v Slaymaker, 2015 IL App (2d) 130528 (February 3, 2015) Winnebago Co. (SCHOSTOK) Reversed.
Defendant was convicted, after bench trial, of resisting a peace officer. Court erred in judgment of conviction, as officer was not engaged in an authorized act at the time, as officer was not authorized to pat Defendant down for weapons in the course of a community-caretaking encounter. Officer stopped Defendant as he walked down paved median while talking on cell phone on a hot summer evening, and told officer he was walking to McDonald's, and placed hands in his pockets. Officer was not authorized to prolong encounter to frisk Defendant for possible weapon. (HUTCHINSON and BURKE, concurring.)

People v. Bernard, 2015 IL App (2d) 140451 (March 3, 2015) Kendall Co. (BIRKETT) Reversed and remanded.
Police officer took bottled of pills from Defendant, when responding to call for domestic disturbance. While in police car, Defendant removed handcuffs, grabbed bottle of pills which officer had taken, and swallowed them. Defendant was charged with obstruction of justice. Evidence supporting Defendant's charged offense was not the fruit of the purportedly unconstitutional police conduct, and thus exclusionary rule did not apply. (ZENOFF and JORGENSEN, concurring.)

People v. Jones, 2015 IL App (2d) 130387 (March 17, 2015) Carroll Co. (McLAREN) Affirmed in part and reversed in part.
Defendant was convicted, after jury trial, of aggravated battery to a peace officer and obstructing a peace officer, and sentenced to five years. Officer was authorized to conduct initial investigation into report of domestic violence, but in doing so he found no evidence of domestic violence or of any other offense, and officer's authority to remain in Defendant's home ended at that point. Court was not required, sua sponte, to instruct jury on self-defense. Once officer attempted to arrest Defendant, Defendant was not entitled to resist. (HUDSON and BIRKETT, concurring.)

People v. Wrencher, 2015 IL App (4th) 130522 (April 30, 2015) Champaign Co. (APPLETON) Affirmed.
Defendant was convicted, after jury trial, of two counts of aggravated battery and sentenced to total 14 years. Information alleged that Defendant dug his fingernails into officer's hand, and spat blood on officer's hand, during officer's investigation of domestic dispute. No ineffective assistance of counsel in failure to argue for jury instruction on resisting a peace officer as alternative to aggravated battery. Essential element of resisting a peace officer--knowing resistance or obstruction--cannot reasonably be inferred, and there was no evidence to support conviction of that offense and simultaneous acquittal of aggravated battery.(TURNER and HARRIS, concurring.)

In re Q.P., 2015 IL 118569 (September 24, 2015) Peoria Co. (KILBRIDE) Appellate court reversed.
Minor was found guilty of obstructing justice for knowingly furnishing false information to a police officer with intent to prevent his own apprehension. Obstruction of justice statute is violated when a person knowingly provides false information with intent to prevent his seizure or arrest on a criminal charge. Minor gave false information about his identity shortly after he was placed in backseat of squad car, being apprehended for vehicle burglary. At that time, officer did not know about separate, unrelated juvenile warrant, and had not apprehended minor on that warrant. Officer learned of warrent only after transporting minor to police station. Evidence was sufficient to establish that minor committed offense of obstructing justice by knowingly furnishing false information with intent to prevent his apprehension on juvenile warrant.(GARMAN, FREEMAN, THOMAS, KARMEIER, BURKE, and THEIS, concurring.)

People v. Jenkins, 2016 IL App (1st) 133656 (February 16, 2016) Cook Co., 1st Div. (HARRIS) Reversed and remanded.
Defendant was convicted, after jury trial, of felony of resisting or obstructing a police officer. Failure to instruct jury on the proximate cause element of the offense (that his resisting or obstructing officer proximately caused injury to officer) was error. Evidence was closely balanced, as conflicting testimony at trial as to whether Defendant's kick to officer's face or hand resulted from his resisting arrest, and judgment depends solely on credibility of trial witnesses. Thus, plain error exception to waiver rule does not apply.(CUNNINGHAM and CONNORS, concurring.)

ONE ACT / ONE CRIME

People v. McWilliams, 2015 IL App (1st) 130913 (January 21, 2015) Cook Co., 3d Div. (HYMAN) Affirmed in part and vacated in part.
Defendant was convicted, after bench trial, of two counts of armed robbery and two counts of aggravated unlawful restraint. Convictions for both offenses violate the one-act, one-crime

doctrine, where restraint was inherent in and concurrent with the armed robbery. Concurrent 12-year sentences for each armed robbery count are not excessive. No indication that court failed to consider mitigating factors, and sentence was well within statutory range.(PUCINSKI and LAVIN, concurring.)

People v Jones, 2015 IL App (2d) 120717 (February 3, 2015) Winnebago Co. (SCHOSTOK)
Affirmed in part and vacated in part.
Defendant was convicted, after jury trial, of 12 counts of first-degree murder, and attempted first-degree murder, 4 counts of home invasion, and residential burglary. Court erred in convicting Defendant of 12 counts of murder, as two persons were murdered; and court erred in convicting on 4 counts of home invasion as convictions were based on Defendant's single entry into home of victims. As convictions of residential burglary and home invasion were based on same conduct, conviction for residential burglary is vacated. (HUTCHINSON and BURKE, concurring.)

People v. Scott, 2015 IL App (1st) 133180 (December 1, 2015) Cook Co., 2d Div. (HYMAN)
Affirmed in part and vacated in part; remanded with directions.
(Court opinion corrected 12/8/15.) Defendant was convicted, after bench trial, of 2 counts of armed robbery, 2 counts of aggravated discharge of a firearm, and 1 count of aggravated battery with a firearm, and sentenced to aggregate term of 43 years. Defendant pointed a gun at pizza delivery driver, and told him not to move; and shot driver's teenage niece, hitting her in the thigh. Evidence does not support conviction for attempted armed robbery, as Defendant never demanded pizza or other property, and thus actions were not a substantial step toward armed robbery. Under one-act, one-crime doctrine, Defendant cannot be convicted of both armed robbery of niece and attempted armed robbery of driver where there was only one attempt to take pizza from niece. Under same rule, Defendant's single act of firing at niece cannot be basis for multiple convictions, and sentence should be imposed on more serious offense. Thus, convictions for aggravated battery with a firearm and aggravated discharge of a firearm are vacated. State's participation in preliminary Krankel inquiry created adversarial situation requiring reversal in claim of ineffective assistance of counsel.(PIERCE and NEVILLE, concurring.)

People v. Sanderson, 2016 IL App (1st) 141381 (April 20, 2016) Cook Co., 3d Div. (MASON)
Affirmed in part and reversed in part.
As both of Defendant's convictions arising out of possession of weapons were based on single physical act of possessing a handgun, the conviction on the less serious charge (AUUW) is vacated under the one-act, one-crime rule. (FITZGERALD SMITH and PUCINSKI, concurring.)

OTHER CRIMES / BAD ACTS

People v. Watkins, 2015 IL App (3d) 120882 (January 21, 2015) Peoria Co. (CARTER) Affirmed in part and reversed in part; remanded.
Defendant was convicted, after jury trial, of unlawful possession of controlled substance with intent to deliver and sentenced to 8 years. Court erred in admitting photos of drug-related text-message conversations with the name "Charles" found on a cell phone in close proximity to drugs as evidence that Defendant had connection to cell phone and, circumstantially, to the drugs. Court did not abuse its discretion in admitting evidence of Defendant's prior conviction for possession of cannabis with intent to deliver as some evidence of Defendant's intent to deliver cocaine in this case. Requirement of general threshold similarity between facts of prior crime and current offense was satisfied. (HOLDRIDGE, concurring; WRIGHT, specially concurring.)

People v. McGee, 2015 IL App (1st) 122000 (January 23, 2015) Cook Co., 6th Div. (HOFFMAN) Reversed and remanded.
Defendant was convicted, after jury trial, of stalking a CTA employee and sentenced to 30 months in prison. Court erred in allowing evidence of Defendant's altercation with victim's husband, as it was not part of a continuing narrative of Defendant's alleged course of stalking conduct and was not relevant to prove his intent toward Vicki. Defendant allegedly stabbed victim's husband for a distinct reason and two hours after time charged offense was completed. Admission of this other-crimes evidence was so pervasive that it was not harmless error. (LAMPKIN and ROCHFORD, concurring.)

People v. McCullough, 2015 IL App (2d) 121364 (February 11, 2015) De Kalb Co. (ZENOFF) Affirmed in part and vacated in part.
Defendant was convicted, after bench trial in 2012, of of 1957 kidnapping and murder of seven-year-old girl, when Defendant was age 18. Exclusion of FBI reports did not violate Defendant's right to present a defense, as rule of evidence prohibiting their admission is not arbitrary, and reports do not tend to exonerate Defendant. Court properly excluded testimony of witness that facts of a 1951 Pennsylvania murder "closely matched" this case, as only speculation linked the two cases. (SCHOSTOK and BURKE, concurring.)

People v. Fields, 2015 IL App (3d) 080829-C (March 5, 2015) Henry Co. (McDADE) Reversed and remanded.
Defendant was convicted of multiple sex assault offenses as to his minor stepdaughter. Subsequent reversal of Defendant's underlying prior conviction for aggravated criminal sexual abuse of his prior girlfriend's minor daughter which was admitted to show propensity requires reversal and a new trial. Resulting injustice in present case was not harmless. Reversal of underlying case was "new evidence" in that conviction was in good standing at time of present trial. (SCHMIDT, specially concurring; LYTTON, dissenting.)

People v. Smith, 2015 IL App (4th) 130205 (March 26, 2015) McLean Co. (POPE) Affirmed.
Defendant was convicted, after jury trial, of multiple sex offenses against two unrelated children. Court properly admitted evidence of Defendant's alleged (and uncharged) sexual abuse of his then stepdaughter and her cousin over 6-year period, ending 12 years prior to alleged abuse at issue in present case. Court properly balanced statutory factors and found similarities of prior incidents to charged incidents sufficient such that probative value of evidence was not substantially outweighed by its prejudicial effect. Court did not abuse its discretion in admitting allegations of prior abuse to show propensity per Seciton 115-7.3 of Code of Criminal Procedure. (HARRIS and STEIGMANN, concurring.)

People v. Cavazos, 2015 IL App (2d) 120444 (March 31, 2015) Kane Co. (JORGENSEN) Affirmed.
Defendant, then age 16, and his brother, then age 17, were charged with first-degree murder in shooting death of 15-year-old, and sentenced to aggregate 60 years. Court within its discretion in admitting other-crimes evidence of Defendant, later that night, firing shots at rival gang member. Court within its discretion in admitting testimony of police officer who was expert in gangs that Defendant was a gang member. Gang membership was relevant, and at heart of charged crimes, to help explain environment that would lead to otherwise inexplicable act of shooting at two strangers. (ZENOFF and BIRKETT, concurring.)

People v. Braddy, 2015 IL App (5th) 130354 (May 20, 2015) Marion Co. (CHAPMAN) Affirmed.
Defendant was charged with criminal sexual assault and aggravated criminal sexual abuse as to his minor daughter and his girlfriend's minor daughter. Court did not err in admitting testimony of Defendant's sister that, 20 years prior, Defendant had sexually abused her. Factual differences between abuse alleged by sister and charged crimes were not significant, and involved Defendant abusing children living in his household with whom he had familiar relationship. Court properly considered statutory factors in finding that sister's testimony was more probative than prejudicial. (CATES and GOLDENHERSH, concurring.)

People v. Clark, 2015 IL App (1st) 131678 (June 25, 2015) Cook Co., 4th Div. (ELLIS) Affirmed.
Defendant was convicted of theft for stealing a bicycle. At trial, court improperly allowed evidence that four years prior Defendant had stolen another bicycle in same area, as it did not prove intent to commit theft or his identity in a permissible way, but relied on inference that he possessed propensity to commit theft. However, error was harmless as evidence was overwhelming against Defendant. Court erred in delivering incomplete version of IPI Criminal 3.14, but not plain error, as jury was told that it "may" consider evidence of prior conviction, and other instructions told jury it could give whatever weight it deemed appropriate. (FITZGERALD SMITH and COBBS, concurring.)

People v. Salem, 2016 IL App (3d) 120390 (March 21, 2016) Will Co. (WRIGHT) Reversed and remanded.
Investigators discovered Defendant was in possession of multiple open Illinois vehicle titles pertaining to various stolen vehicles. Court erred in allowing State to present 11 federal convictions to jury to impeach Defendant's credibility, as they were beyond the strict 10-year requirement of Rule 609(b) of Illinois Rules of Evidence. Court erred in allowing State to impeach Defendant's credibility with proof of guilty for 2010 Cook County charge, because plea had not resulted in sentence and final judgment of conviction. Without convictions and guilty plea, State could not properly urge jury that Defendant's credibility was weakened by his prior convictions. Thus, admission of improper evidence was so egregious that it eroded integrity of judicial process. Court abused its discretion by allowing State to introduce unlimited other crimes evidence as proof of Defendant's "mental state". (O'BRIEN and LYTTON, concurring.)

People v. Gregory, 2016 IL App (2d) 140294 (March 30, 2016) Kendall Co. (BIRKETT) Reversed and remanded.
Defendant was convicted, after jury trial, of 1 count of threatening a public official and 3 counts of cyberstalking. Court erred by allowing into evidence 10 letters, read in their entirety, containing references to other crimes and prior bad acts. Although portions of letters had some relevance to issue of identity, abuse of discretion in admitting other portions of letters which contained large amounts of other-crimes evidence. Great risk that jury would find Defendant guilty of charges in light of his propensity, or that it would find Defendant guilty of one of the uncharged acts, so the letters' prejudicial effect overwhelmed their probative value. (JORGENSEN and BURKE, concurring.)

PLEAS

People v. Smith, 2015 IL 116572 (February 5, 2015) Will Co. (BURKE) Appellate court reversed; circuit court affirmed.
Illinois Supreme Court held, in 2012 People v. White decision, that when factual basis for plea agreement accepted by circuit court establishes that the defendant is subject to mandatory sentencing enhancement, court must impose it even if agreement included condition that State would not pursue enhancement. As that decision established a new rule within the meaning of U.S. Supreme Court's 2989 Teague v. Lane decision, which does not fall within either of the Teague exceptions, it does not apply retroactively to convictions which were final at time People v. White case was decided. (GARMAN, FREEMAN, THOMAS, KILBRIDE, KARMEIER, and THEIS, concurring.)

People v. Cowart, 2015 IL App (1st) 131073 (February 17, 2015) Cook Co.,1st Div. (HARRIS) Affirmed.
Court properly dismissed Defendant's pro se postconviction petition. Plea court was not required to admonish Defendant of requirement to register as a sex offender, and thus admonishment does not render his plea unknowing or involuntary. Requirement to register as a sex offender is definite and automatic, but does not affect Defendant's punishment. (DELORT and CUNNINGHAM, concurring.)

People v. Palmer-Smith, 2015 IL App (4th) 130451 (March 26, 2015) Champaign Co. (POPE) Affirmed.
Defendant entered negotiated guilty plea to unlawful possession with intent to deliver a controlled substance, more than 900 grams of cocaine, a Class X felony; State recommended sentencing cap of 20 years, and court sentenced Defendant to 20 years. Court did not err in considering large quantity of drugs that Defendant possessed (3,000 grams of cocaine and large amount of cannabis). Court noted that potential maximum could have been 60 years but for plea agreement, and court discussed the need to deter large-scale drug dealers, which was appropriate factor for court to consider. (HARRIS and APPLETON, concurring.)

People v. Grant, 2015 IL App (4th) 140682 (May 26, 2015) Vermilion Co. (POPE) Affirmed.
Defendant pled guilty, pursuant to negotiated plea agreement, to possession of cocaine, with agreed-upon sentence of 2 years with credit for 384 days served. Evidence shows Defendant knew he would not receive double sentencing credit by accepting offer, as DOC treats consecutive sentences as one sentence. Sentence credit was not an essential, bargained-for term of his plea agreement. Although court's admonishment could have been improved by explicitly stating Defendant would not receive "double credit", no due process violation as real justice has not been denied and Defendant has not shown prejudice. Thus, court properly dismissed Defendant's postconviction petition.(TURNER and APPLETON, concurring.)

People v. McClendon, 2015 IL App (3d) 130401 (August 25, 2015) Knox Co. (WRIGHT) Reversed and remanded.
State and Defendant entered into fully-negotiated plea agreement, but a few days later Defendant filed timely motion to withdraw his guilty pleas. State did not object to Defendant's timely motions, but court acted unreasonably by refusing to allow Defendant's request to set aside plea agreement. Judicial discretion should not be exercised to override prosecutorila discretion in absence of compelling reasons. (McDADE and HOLDRIDGE, concurring.)

People v. Liner, 2015 IL App (3d) 140167 (November 17, 2015) Peoria Co. (HOLDRIDGE) Affirmed.
Defendant appeals circuit court's sua sponte denial of his motion to withdraw guilty plea and vacate sentence. Defendant's motion was untimely filed and thus circuit court lacked jurisdiction to consider the motion. Defendant failed to meet requirements of amended Rule 12(b)(4) because

his verification did not contain complete address to which motion was to be delivered. Thus, his Section 1-1-9 verification was insufficient to establish that his motion was mailed to court on a timely date. Remand for further postplea proceedings is unwarranted.(CARTER and WRIGHT, concurring.)

People v. Unzueta, 2015 IL App (1st) 131306 (November 25, 2015) Cook Co., 5th Div. (PALMER) Affirmed.
(Court opinion corrected 11/30/15.) Court properly dismissed Defendant's postconviction petition, as he failed to make a substantial showing of a claim of ineffective assistance of counsel based on counsel's failure to advise him of deportation consequences of his guilty plea. Any prejudice that Defendant may have suffered as a result of counsel's failure was cured by trial court's strict adherence with provisions of Section 113-8 of Code of Criminal Procedure, advising him that if he is not a U.S. citizen that conviction may have consequences of deportation. The fact that Defendant pled guilty while being informed by court of risk of deportation belied the Defendant's claim that his decision would have been different if he had been told that the risk was a certainty. (McBRIDE and GORDON, concurring.)

People v. Maxey, 2015 IL App (1st) 140036 (December 31, 2015) Cook Co., 5th Div. (GORDON) Affirmed.
Defendant pled guilty to attempted aggravated robbery and was sentenced to 11 years. No good cause to overlook untimeliness of Defendant's motion to vacate bond, which was filed several years late. Record does not support Defendant's claim that he misunderstood his guilty plea. Illinois Supreme Court has abolished the "void sentence rule" that a sentence that does not conform to a statutory requirement is void. (REYES and PALMER, concurring.)

People v. Haywood, 2016 IL App (1st) 133201 (March 14, 2016) Cook Co., 1st Div. (HARRIS) Affirmed.
(Court opinion corrected 4/8/16.) Court properly denied Defendant's motion to withdraw his guilty plea.In light of thorough discussions that took place at Rule 402 conference prior to court accepting Defendant's guilty plea, records shows that Defendant made his plea knowingly and voluntarily. Court admonished Defendant on nature of charges against him, applicable sentences, his right to plead not guilty, and in pleading guilty his waiver of right to jury trial and to confront witnesses. Defendant had previously filed pro se motion for substitution of judge, but never ruled on motion. During 402 conference, court did not inform Defendant that substitution of judge issue would remain relevant only if he rejected the plea recommendation and elected to have trial.However, Defendant failed to show prejudice by inadequate admonishment.(CUNNINGHAM and CONNORS, concurring.)

People v. Kibbons, 2016 IL App (3d) 150090 (April 5, 2016) Kankakee Co. (O'BRIEN) Appeal dismissed.
Defendant pled guilty to aggravated DUI, and State agreed to sentencing cap and dismissed charges based on plea, making it a negotiated plea. Thus, Defendant could not appeal from negotiated plea unless first filing motion to withdraw plea and vacate judgment. Defendant failed to file notice of appeal within 30 days of denial of that motion, and instead filed the correct motion: motion to withdraw plea. As notice of appeal was untimely, appellate court has no jurisdiction over appeal.(McDADE and SCHMIDT, concurring.)

PLEA (604d)

People v. Axelson, 2015 IL App (2d) 140173 (January 9, 2015) Winnebago Co. (McLAREN) Vacated and remanded with directions.
Defendant entered open plea of guilty to burglary and unlawful possession of a stolen motor vehicle and was sentenced to concurrent 10-year prison terms. Subsequently, new defense counsel filed motion to withdraw guilty plea, but counsel's certificate did not strictly comply with Rule 604(d), as he did not mention contentions of error as to Defendant's sentences. Proceedings on remand must follow Rule 605(c), which applies here because at plea hearing prosecution did make concession in agreeing to forgo any recommendation of consecutive sentences.(BIRKETT and SPENCE, concurring.)

People v. Willis, 2015 IL App (5th) 130147 (March 6, 2015) Marion Co. (GOLDENHERSH) Reversed and remanded with directions.
Court erred in denying Defendant's motion to withdraw his guilty plea, as his attorney filed a Supreme Court Rule 604(d) certificate that was defective on its face. Certificate incorrectly refers to Defendant with pronoun "her", and states that he made amendments to pleadings, yet he later admitted that he had not done so. Certificate does not specify that counsel examined report of proceedings of guilty plea.(STEWART and SCHWARM, concurring.)

People v. Mason, 2015 IL App (4th) 130946 (August 4, 2015) Champaign Co. (TURNER) Reversed and remanded.
Pursuant to negotiated plea agreement, Defendant pled guilty to criminal sexual abuse. Court erred in denying Defendant's request to withdraw his guilty plea, as defense counsel's Rule 604(d) certificate is deficient, because it fails to show counsel consulted with Defendant about his contentions of error related to his guilty plea AND sentence. A Rule 604(d) certificate which uses the Rule's verbatim language with the "or" rather than "and" does not precisely comply with Rule 604(d). (POPE and KNECHT, concurring.)

People v. Evans, People v. Evans (August 17, 2015) Will Co. (O'BRIEN) Vacated and remanded with instructions.
Defendant pled guilty to home invasion and was sentenced to 12 years. Court denied Defendant's motion for reconsideration of sentence, then appealed denial of motion three times, each time court remanding for compliance with Rule 604(d). Trial court's most recent denial of motion to reconsider sentence was void for lack of subject matter jurisdiction. Because trial court had not filed the mandate received from appellate court when trial court took action on motion, trial court had not yet been revested with jurisdiction over case.(HOLDRIDGE and WRIGHT, concurring.)

People v. Colin, 2015 IL App (1st) 132264 (September 15, 2015) Cook Co., 2d Div. (PIERCE) Affirmed.
Defendant pled guilty to first degree murder and was sentenced to 53 years. Prosecutor and defense counsel both failed to comply with Rule 402, by failing to fully and completely inform court of terms of plea agreement. Omission was cured by hearing under Rule 604(d) to vacate or reopen plea proceeding, when court took testimony on issues that Defendant claimed affected his initial plea in hearing on motion to vacate, and court concluded that original plea was not involuntary or coerced. (NEVILLE and SIMON, concurring.)

People v. Martell, 2015 IL App (2d) 141202 (September 23, 2015) Lake Co. (BIRKETT) Vacated and remanded.
(Modified upon denial of rehearing 10/23/15.) Defendant entered negotiated plea of guilty to unlawful restraint and was sentenced to agreed term of 12 months. Nine days later, Defendant moved to withdraw his plea, alleging he had not been given time to make a fully informed decision. Defense attorney's Rule 604(d) certificate was deficient, as certificate failed to state that attorney consulted with Defendant to ascertain Defendant's contentions of error in both the sentence and the entry of plea of guilty. Terms of Rule 604(d) apply even when parties have negotiated a specific sentence. (SCHOSTOK and McLAREN, concurring.)

People v. Luna, 2015 IL App (2d) 140983 (October 23, 2015) McHenry Co. (SCHOSTOK) Affirmed.
Defendant pled guilty to one count of aggravated DUI, in exchange for State nol-prossing other charges; there was no agreement as to Defendant's sentence. Court sentenced Defendant to 8 years, and Defense counsel moved for reconsideration of sentence, which court denied. On appeal, court granted Defendant's motion for remand to afford counsel opportunity to file new motion in accordance with Rule 604(d). New Rule 604(d) certificate strictly complies with Rule 604(d). Certificate indicates that counsel consulted with Defendant to ascertain his contentions of error, and includes no language limiting the scope of the consultation to a particular category of error. Thus, natural import of certificate's unqualified language is that the consultation broadly encompassed both types of error that postplea proceedings were designed to redress: sentencing errors and errors affecting validity of Defendant's plea.(BURKE and SPENCE, concurring.)

In re H.L., 2015 IL 118529 (November 4, 2015) DeKalb Co. (GARMAN) Appellate court reversed; remanded.
Strict compliance of Rule 604(d) does not require counsel to file his or her certificate of compliance prior to or at hearing on Defendant's postplea motion. Strict compliance requires counsel to prepare a certificate that meets the content requirements of Rule 604(d) and to file the certificate with the trial court, prior to filing of any notice of appeal. (THOMAS, KARMEIER, and THEIS, concurring; FREEMAN, KILBRIDE, and BURKE, dissenting.)

People v. Strickland, 2015 IL App (3d) 140204 (December 1, 2015) Will Co. (LYTTON) Affirmed in part and reversed in part; remanded.
Defendant was immediately sentenced to 6 years of imprisonment after his conviction for unlawful delivery of a controlled substance, but mittimus was stayed for 5 1/2 months while he was allowed on bond to receive treatment. Mittimus issued when Defendant failed to comply with terms of his bond. Court was enforcing its judgment, and retained jurisdiction to do so, when mittimus issued. Case remanded for further postplea proceedings, as defense counsel's Supreme Court Rule 604(d) certificate was inadequate as defense counsel failed to certify that he had consulted with Defendant about any possible contentions of error in his guilty plea and failed to certify that he had examined report of proceedings of plea.(O'BRIEN, concurring; WRIGHT< specially concurring.)

POST-CONVICTION PETITIONS

People v. Kuehner, 2015 IL 117695 (May 21, 2015) Sangamon Co. (THOMAS) Appellate court reversed; circuit court reversed; remanded.
(Correcting court designation.) Circuit court erred in granting appointed postconviction counsel's motion to withdraw and dismissing Defendant's postconviction petition. Where a pro se postconviction petition advances to second stage on basis of affirmative judicial determination that petition is neither frivolous nor patently without merit, appointed counsel's motion to withdraw must contain at least some explanation as to why all claims set forth in petition are so lacking in legal and factual support as to compel withdrawal. (GARMAN, FREEMAN, KILBRIDE, KARMEIER, BURKE, and THEIS, concurring.)

People v. Flowers, 2015 IL App (1st) 113259 (January 6, 2015) Cook Co. (FITZGERALD SMITH) Affirmed.
Defendant filed pro se postconviction petition, with affidavits from witnesses claiming that Defendant was innocent of first-degree murder of which he had been convicted. Defendant's culpable negligence in not timely filing petition is not excused by affiants' having moved multiple times over the years, as their affidavits indicate that Defendant could have located them much sooner. Court properly dismissed petition as untimely. (EPSTEIN and ELLIS, concurring.)

People v. Haynes, 2015 IL App (3d) 130091 (January 13, 2015) Kankakee Co. (McDADE) Reversed and remanded.
Defendant filed pro se postconviction petition claiming that prosecution suborned perjury of a proffered 11-year-old witness, who was cousin of Assistant State's Attorney who was co-counsel during his criminal trial. Affidavit of witness offered by witness stated that shooting victim did have a gun, but that he was told to say that he did not have a gun. Affidavit, if true, renders witness' entire testimony reliable. A witness's testimony is entirely unreliable if he is under instructions from a prosecutor to lie or to omit certain facts while testifying. (HOLDRIDGE, concurring; LYTTON, specially concurring.)

People v. Montes, 2014 IL App (2d) 140485 (February 6, 2015) Kane Co. (JORGENSEN) Affirmed.
Defendant was convicted, after jury trial in absentia, of attempted first-degree murder and aggravated discharge of a firearm. Court properly summary dismissed Defendant's postconviction petition. Claim of entrapment is forfeited as he did not raise it at trial, and also as that defense is unavailable to a defendant who denies committing the offense. Actual-innocence claim was meritless; basis for entrapment defense did not remain undiscovered until after trial. No ineffective assistance of counsel claim, as Defendant's presence at trial was required for counsel to decide whether to submit instruction on lesser charge.(McLAREN and BIRKETT, concurring.)

People v. Johnson, 2015 IL App (2d) 140388 (March 24, 2015) Kane Co. (ZENOFF) Affirmed. (Court opinion corrected 4/15/15.) In postconviction proceedings, doctrine of res judicata bars relitigation of any issues which have previously been decided by a reviewing court. Failure to swear grand jury does not divest court of subject-matter jurisdiction to enter a criminal conviction. Court is not required to conduct preliminary hearing where a defendant is indicted after initially having been charged in some other manner.(SCHOSTOK and BURKE, concurring.)

People v. Wingate, 2015 IL App (5th) 130189 (April 20, 2015) St. Clair Co. (MOORE) Affirmed.
Court properly dismissed Defendant's petition for postconviction relief at second stage of proceedings. Defendant was convicted of first-degree murder in shooting death of wife of long-time acquaintance in dispute over money Defendant owed him. Proffered impeachment testimony is not of such conclusive character that it would probably change result on retrial. Affidavit of alleged witness, claiming that Defendant acted in self-defense, does not meet criteria to be construed as "newly discovered" evidence, as Defendant did not meet his burden to show that there has been no lack of due diligence on his part. Even if proffered testimony could potentially reduce liability to second-degree murder, it would not support claim of actual innocence. (CATES and STEWART, concurring.)

People v. Ross, 2015 IL App (1st) 120089 (May 8, 2015) Cook Co., 5th Div. (GORDON) Reversed and remanded with instructions.
Defendant was convicted, after bench trial, of being an armed habitual criminal and sentenced to 80 months imprisonment. Court erred when it summarily dismissed Defendant's pro se postconviction petition in the first stage because affidavit of Defendant's teenage son is newly discovered evidence, and Defendant's due process rights were not violated as Defendant's term of MSR was imposed by operation of law. (McBRIDE, concurring; PALMER, specially concurring.)

People v. Allen, 2015 IL 113135 (May 21, 2015) Cook Co. (GARMAN) Circuit court reversed; appellate court reversed.
Defendant filed pro se postconviction petition, alleging actual innocence and raising related constitutional issues that State suborned perjury and coerced confessions, and attached unnotarized statement, styled as affidavit, wherein author took responsibility for victim's murder and stated that Defendant had no involvement in murder. Statement qualifies as other evidence for first-stage postconviction review. Circuit court's consideration that statement lacked "conclusive character" essentially weighed credibility of Defendant's petition and statement against Defendant's prior grand jury testimony, and testimony of detective and prosecutor. This analysis is more probing inquiry than is proper on first-stage review, where dismissal is proper only if petition has no arguable basis either in law or in fact. (FREEMAN, KILBRIDE, BURKE, and THEIS, concurring; THOMAS and KARMEIER, dissenting.)

People v. Kuehner, 2015 IL 117695 (May 21, 2015) Sangamon Co. (THOMAS) Appellate court reversed; circuit court reversed; remanded.
Circuit court erred in granting appointed postconviction counsel's motion to withdraw and dismissing Defendant's postconviction petition. Where a pro se postconviction petition advances to second stage on basis of affirmative judicial determination that petition is neither frivolous nor patently without merit, appointed counsel's motion to withdraw must contain at least some explanation as to why all claims set forth in petition are so lacking in legal and factual support as to compel withdrawal. (GARMAN, FREEMAN, KILBRIDE, KARMEIER, BURKE, and THEIS, concurring.)

People v. Shotts, 2015 IL App (4th) 130695 (June 2, 2015) Clark Co. (STEIGMANN) Affirmed.
Defendant was convicted in 1991, after jury trial, of multiple counts of aggravated criminal sexual assault of two minors under ruse that he wanted them to babysit for his son, and sentenced to total 64 years. Consolidated appeal is Defendant's eleventh appeal from these convictions. Defendant failed to show that conflict of interest necessitated transfer of his case from OSAD's fourth district office. OSAD's motion to withdraw granted, as no meritorious grounds exist to challenge court's denial of defendant's motion to file successive postconviction petition. His claims raised in that petition had been raised or could have been raised in earlier proceedings. (POPE and APPLETON, concurring.)

People v. Walker, 2015 IL App (1st) 130530 (June 17, 2015) Cook Co., 3d Div. (HYMAN) Affirmed.
(Court opinion corrected 6/23/15.) Defendant was convicted, 30 years ago, of first-degree murder in shooting deaths of three people. Court properly summarily dismissed his third pro se postconviction petition, as petition presents neither newly discovered, noncumulative exculpatory evidence nor material evidence of a conclusive character that would likely change outcome on retrial. As issue of another shooter was litigated at trial, and as Defendant failed to present any newly discovered evidence, doctrine of res judicata bars issue. (LAVIN, concurring; PUCINSKI, dissenting.)

People v. Kitchell, 2015 IL App (5th) 120548 (June 29, 2015) Lawrence Co. (GOLDENHERSH) Reversed and remanded.
Court erred in dismissing postconviction petition alleging ineffective assistance of guilty plea counsel where plea counsel's advice was incorrect as to available sentencing credit. Defendant attached affidavit to his petition, averring that he would not have pleaded guilty but for erroneous advice of plea counsel that he was eligible for good-conduct credit for participation in certain Department programs. This averment is sufficient to entitle Defendant to evidentiary hearing. (CATES and CHAPMAN, concurring.)

People v. Robinson, 2015 IL App (4th) 130815 (July 16, 2015) Douglas Co. (APPLETON) Affirmed.
Defendant was convicted, on basis of stipulated evidence in bench trial, of unlawful trafficking in cannabis, and sentenced to 20 years. Court properly dismissed postconviction petition as untimely, as Defendant failed to establish that lateness was due to "culpable negligence" on his part, and claimed only that his appellate counsel failed to notify him of appellate court's decision on direct appeal. (KNECHT and HOLDER WHITE, concurring.)

People v. Kines, 2015 IL App (2d) 140518 (July 24, 2015) DuPage Co. (HUTCHINSON) Reversed and remanded with directions.
Defendant was convicted, after bench trial, of first-degree murder of 11-year-old girl, based on theory of accountability, and thus any DNA evidence linking two suspected perpetrators would tend to inculpate Defendant as well. There is no reason not to test key physical evidence that was admitted at Defendant's 1989 trial.Defendant met all requirements under Section 116-3 of Code of Criminal Procedure, and court erred in denying his petition for postconviction DNA testing. A defendant is excused from establishing a chain of custody for evidence that was admitted at his or her trial, as evidence would have remained within custody of circuit clerk. (BURKE and SPENCE, concurring.)

People v. Minniefield, 2015 IL App (1st) 141094 (August 14, 2015) Cook Co., 5th Div. (GORDON) Affirmed.
Court entered order striking Defendant's pro se document entitled "Motion to Vacate Conviction/Sentence as Void". On appeal, Defendant characterizes his Motion as a Section 2-1401 petition, and concedes that he chose incorrect vehicle to present his claims. Court did not err in not recharacterizing Defendant's Motion, which set forth only one claim, as a successive postconviction petition, in light of consequences to Defendant that such a recharacterization would have. (PALMER and REYES, concurring.)

People v. Crenshaw, 2015 IL App (4th) 131035 (September 9, 2015) Brown Co. (TURNER) Affirmed.
Defendant was convicted of criminal sexual assault and sentenced to 8 years. Court properly denied Defendant's pro se petition for leave to file successive postconviction petition. Postconviction counsel filed Rule 651(c) certificate specifically stating he satisfied the requirements. Defendant failed to provide any specific examples of bias on part of trial judge due to her presiding over criminal matter and Defendant's divorce. Nothing in record indicates trial judge relied on any information derived from divorce case to Defendant's detriment at his criminal trial. (POPE and STEIGMANN, concurring.)

People v. Cooper, 2015 IL App (1st) 132971 (October 14, 2015) Cook Co., 3d Div. (MASON) Affirmed.
Defendant was convicted, after jury trial, of attempted first degree murder, by personally discharging a firearm proximately causing great bodily harm, and sentenced to 31 years. No basis in record to conclude that court summarily and improperly dismissed pro se postconviction petition on ground of untimeliness, which is Defendant's only argument challenging dismissal of petition.(LAVIN and PUCINSKI, concurring.)

People v. Hotwagner, 2015 IL App (5th) 130525 (October 22, 2015) Lawrence Co. (SCHWARM) Affirmed.
Defendant appeared pro se at final pretrial conference and pled guilty to one count of aggravated criminal sexual assault in exchange for a 12-year sentence and State's dismissal of 2 other counts. At plea hearing, prosecutor advised court that he and Defendant had reached agreement after talking outside the courtroom; and that he had asked Defendant if he wanted a court-appointed attorney or if he wanted to speak with him, and Defendant said he wanted to speak with him. Defendant filed pro se postconviction petition, alleging that when he appeared for final pretrial conference he expected to be met by his former attorney, who had then recently withdrawn, but instead was met by State's Attorney, and he felt ambushed and threatened. Defendant cannot show reasonable probability that result of evidentiary hearing would have been different had witness, who stated in affidavit that he had witnessed hallway conversation. No ineffective assistance of counsel in handling postconviction petition. Trial court's denial of

postconviction petition hinged on court's finding that Defendant was not credible. (CATES and GOLDENHERSH, concurring.)

People v. Morgan, 2015 IL App (1st) 131938 (October 21, 2015) Cook Co., 3d Div. (MASON) Affirmed.
Defendant was convicted of attempted murder and aggravated battery with a firearm, and filed pro se postconviction petition in which he alleged he had newly discovered evidence of his actual innocent; and alleged that trial counsel and appellate counsel were ineffective (including claim that appellate counsel was ineffective for failing to raise on appeal her own ineffectiveness at sentencing). Court did not commit manifest error in rejecting Defendant's actual innocence claim based on finding that Defendant's testimony was incredible and would not have changed result at trial. Court properly dismissed defendant's claims of ineffective assistance of counsel. Postconviction counsel satisfied requirements of Rule 651(c), in that Defendant agreed to be jointly represented by father and son attorney, and those attorneys took all actions necessary under the Rule. (PUCINSKI and HYMAN, concurring.)

People v. Diggins, 2015 IL App (3d) 130315 (November 12, 2015) Peoria Co. (O'BRIEN) Affirmed.
Petitioner was convicted, after jury trial, of 2 counts of aggravated battery with a firearm and 1 count of armed robbery for his involvement in a robbery in 1995. Postconviction petitions claim that his trial counsel was ineffective during plea negotiations, but this issue was not raised in initial postconviction pleading.Petitioner could have raised the issue in his initial pro se postconviction petition, and he failed to demonstrate cause for not doing so. Thus, court properly denied leave to file successive postconviction petition. (CARTER and LYTTON, concurring.)

People v. Smith, 2015 IL App (1st) 140494 (November 10, 2015) Cook Co., 3d Div. (MASON) Reversed and remanded.
Defendant was convicted of first degree murder for shooting death of gang member who was playing dice with other gang members. Court erred in second stage dismissal of his postconviction petition. Defendant made a substantial showing of actual innocence where eyewitness to shooting recanted his identification of Defendant. Witness' recantation was newly discovered evidence, as Defendant could not have discovered this recantation prior to trial. This witness was the only eyewitness to identify Defendant as shooter at trial; the other two eyewitnesses both recanted their prior identifications in their trial testimony, and State produced no physical evidence linking Defendant to the crime.(FITZGERALD SMITH and PUCINSKI, concurring.)

People v. Lamar, 2015 IL App (1st) 130542 (November 19, 2015) Cook Co., 4th Div. (COBBS) Reversed and remanded.
Defendant's postconviction petition supports a substantial showing that he was denied effective assistance of counsel in alleging that trial counsel failed to file a notice of appeal. Defendant

alleged that he never told counsel that he did not want to appeal, he thought one was pending, and he expected and wanted an appeal, and explicitly asked trial counsel to take steps to prepare an appeal. Allegations, if proven at evidentiary hearing, would demonstrate that trial counsel's performance was deficient. Defendant's petition sets forth a substantial showing of a constitutional violation and thus Defendant is entitled to an evidentiary hearing. (McBRIDE and HOWSE, concurring.)

People v. Weathers, 2015 IL App (1st) 133264 (November 25, 2015) Cook Co., 4th Div. (McBRIDE) Reversed and remanded.
Defendant was convicted, after bench trial, of first degree murder in 2002 shooting death, and sentenced to 75 years. Court erred in denying his motion for leave to file successive postconviction petition, as his claims of a physically coerced confession have never been reviewed. Defendant attached portions of 2012 Illinois Torture Inquiry and Relief Commission (TIRC) report, which related to detectives that interrogated him, and contended that it was newly discovered evidence as it was not available at the time of his initial postconviction petition in 2009. Defendant established requisite cause, in than an objective factor impeded his ability to raise this claim earlier. Defendant satisfied prejudice prong as the use of a Defendant's physically coerced confession as substantive evidence of his guilt is never harmless error.(HOWSE and ELLIS, concurring.)

People v. Johnson, 2015 IL App (2d) 131029 (December 16, 2015) WInnebago Co. (SCHOSTOK) Affirmed.
Defendant was convicted, after jury trial, of first-degree murder. Court properly dismissed Defendant's pro se postconviction petition at second stage, as Defendant failed to make showing of culpable negligence to excuse his late filing of his petition. Defendant had 35 days after judgment on direct appeal to file petition for leave to appeal and 6 months from that point to file his postconviction petition. (JORGENSEN and SPENCE, concurring.)

People v. Burns, 2015 IL App (1st) 121928 (December 21, 2015) Cook Co., 3d Div. (CUNNINGHAM) Vacated and remanded.
Under Illinois Supreme Court's 2015 ruling in People v. Allen**,** court improperly dismissed Defendant's postconviction petition at first stage. "Strategy argument" as to trial counsel's decision not to call a witness is inappropriate for the first stage of review of postconviction petition.Relevant test is whether it is arguable that counsel's performance fell below an objective standard of reasonableness and that the defendant was prejudiced. Defendant presented an "arguable" claim that her trial counsel was ineffective in not calling co-defendant as a witness. (CONNORS and DELORT, concurring).

People v. Rodriguez, 2015 IL App (2d) 130994 (December 23, 2015) Ogle Co. (McLAREN) Vacated and remanded.
Defense counsel failed to substantially comply with Rule 651(c), and he failed to provide reasonable level of assistance at second stage postconviction proceedings. Defendant's fitness to stand trial was a constitutional issue that was strongly considered, should have been fully explored, and possibly should have been raised in amended postconviction petition. Defense counsel never fully explored issue, and never raised issue. Defendant's fitness at time of trial needed to be reviewed in order for defense counsel to properly prepare amended postconviction petition. (JORGENSEN and HUDSON, concurring.)

People v. Jackson, 2015 IL App (3d) 130575 (December 28, 2015) Peoria Co. (LYTTON) Reversed and remanded.
Defendant pled guilty to 2 counts of first-degree murder in exchange for a sentence of natural life in prison. Defendant's postconviction counsel improperly filed a motion to withdraw and dismiss Defendant's successive postconviction petition. State did not file motion to dismiss, and verbal statements, even in construed as an oral motion to dismiss, are insufficient, as an oral motion to dismiss is not authorized by Post-Conviction Hearing Act.Postconviction defense counsel should not seek dismissal of a Defendant's postconviction petition, but instead, if counsel beliefs that petition is frivolous and patentaly without merit, then counsel should file a motion to withdraw, not a motion to dismiss petition.(HOLDRIDGE, concurring; SCHMIDT, dissenting.)

People v. Sanders, 2016 IL 118123 (January 22, 2016) Cook Co. (GARMAN) Appellate court affirmed; circuit court affirmed.
Petitioner failed to carry his burden to make substantial showing of a claim of actual innocence. Thus, court properly dismissed his successive postconviction petition at second stage. Proposed testimony would merely add to evidence jury heard at Petitioner's trial, and is not so conclusive in charaacter as would probably change result on retrial, either by itself or in conjunction with recantation of another witness.(FREEMAN, THOMAS, KILBRIDE, KARMEIER, BURKE, and THEIS, concurring.)

People v. Christian, 2016 IL App (1st) 140030 (March 4, 2016) Cook Co., 5th Div. (GORDON) Affirmed.
In postconviction proceeding, Defendant filed petition before Torture Inquiry and Relief Commission, claiming that he had been tortured into confessing to the murder of his stepmother in 1989, a crime for which he was convicted. Commission determined that sufficient evidence existed to warrant judicial review pursuant to the Act. After evidentiary hearing, circuit court found there was no credible evidence that Defendant was entitled to any relief on his torture claim and thus denied Defendant petition. Findings of Commission are not entitled to any preclusive effect before the circuit court. Commission's decision is not the type of decision to which collateral estoppel applies. Required elements of collateral estoppel were not satisfied. Law of the case doctrine is inapplicable. (REYES and LAMPKIN, concurring.)

People v. Hayes, 2016 IL App (3d) 130769 (March 7, 2016) Peoria Co. (HOLDRIDGE) Affirmed in part and reversed in part; remanded.
Defendant was convicted of armed violence, unlawful possession with intent to deliver a controlled substance, and unlawful possession of a controlled substance, and pled guilty to aggravated unlawful use of a weapon. Defense counsel consulted with Defendant to ascertain his contentions of deprivations of constitutional rights, examined trial record, and made any amendments to defendant's pro se postconviction petition necessary for adequate representation of his contentions. Thus, counsel's performance was reasonable and his withdrawal was proper in light of his compliance with Rule 651(c) and the fact that he believed petition was frivolous. Defendant is not entitled to new appointed counsel on remand, as his original counsel performed reasonably.(O'BRIEN, concurring; SCHMIDT, concurring in part and dissenting in part.)

People v. Smith, 2016 IL App (4th) 140085 (March 8, 2016) Sangamon Co. (APPLETON) Reversed and remanded.
Court erred in, after granting appointed counsel's motion to withdraw, entering second-stage dismissal of Defendant's pro se petition for postconviction relief. Postconviction counsel never filed Rule 651(c) certificate, and record fails to show counsel's fulfillment of all his responsibilities under that Rule.(TURNER and STEIGMANN, concurring.)

People v. Allen, 2016 IL App (1st) 142125 (March 25, 2016) Cook Co., 6th Div. (DELORT) Affirmed.
Illinois TOrture Inquiry and Relief Commission Ac does not provide relief to a petitioner who alleges that his conviction resulted from evidence which was physically coerced at the hands of police officers other than former Chicago police commander Jon Burge or his subordinates. Explicit language of the Act limits its application only to petitioners who were victims of Burge or his subordinates.(ROCHFORD and HOFFMAN, concurring.)

People v. Meeks, 2016 IL App (2d) 140509 (March 30, 2016) Kane Co. (SCHOSTOK) Reversed and remanded.
Summary dismissal of postconviction petition was error, as attorney representing Defendant in direct appeal failed to file an appellate brief, resulting in dismissal of appeal. If counsel believed he could not raise any issue of arguable merit on appeal, he was ethically obligated to seek leave to withdraw as appellate counsel, or raise some issue in a properly filed appellate brief.(McLAREN and ZENOFF, concurring.)

People v. Clinton, 2016 IL App (3d) 130737 (March 29, 2016) Rock Island Co. (O'BRIEN) Affirmed.
Defendant was convicted, after jury trial, of first degree murder. Court properly dismissed Defendant's amended postconviction petition, as it did not make a substantial showing of any constitutional violation. Defendant failed to allege that State knew that witnesses were testifying

falsely before grand jury, and that witnesses committed perjury. (SCHMIDT, concurring; McDADE, specially concurring.)

People v. Alfonso, 2016 IL App (2d) 130568 (March 24, 2016) DuPage Co. (SPENCE) Reversed and remanded.
(Court opinion corrected 3/25/16.) Court struck Defendant's postconviction petitions on basis that they violated Defendant's promise, as part of his plea agreement, not to collaterally attack his convictions. Defendant's waiver of his right to file collateral petitions was knowing, voluntary, and intentional; at hearing before plea agreement was final, Defendant acknowledged that proposed agreement would prohibit him from raising any issue in postconviction litigation. No specific admonishments were required, and court's admonishments sufficiently informed Defendant that he was waiving his right to file any type of collateral petition. Postconviction Act requires court to determine whether a petition is frivolous or patently without merit within 90 days of its docketing. As this did not occur, petition is remanded for second-stage proceedings. Court erred in striking petition, as the ruling was premature. (HUTCHINSON and HUDSON, concurring.)

People v. Rademacher, 2016 IL App (3d) 130881 (April 4, 2016) Iroquois Co. (SCHMIDT) Affirmed.
Defendant pled guilty to predatory criminal sexual assault of a child and criminal sexual assault, for sexual conduct with 2 boys, age 13 and under, at parsonage where Defendant lived when he was a church youth minister. In exchange for plea, State agreed to aggregate sentencing range of 12-35 years on mandatorily consecutive sentences. Court properly dismissed Defendant's pro se postconviction petition, as it is not of sufficient constitutional dimension. Court reasonably cited Defendant's pattern of behavior, in performing sexual acts on victims in parsonage before taking them to church the next morning, in aggravation does not offend state or federal constitution. Court's repeated references to religion and church were invited by Defendant, who called 6 clergy members to testify in mitigation. (HOLDRIDGE and WRIGHT, concurring.)

People v. Wideman, 2016 IL App (1st) 123092 (March 31, 2016) Cook Co., 1st Div. (CUNNINGHAM) Affirmed.
Defendant was convicted, in 2004 jury trial, of first degree murder and armed robbery. Defendant did not set forth evidence of such conclusive character that it would probably change the result on retrial, as is required to allow leave to file a successive petition on basis of actual innocence. Defendant did not satisfy independent "cause and prejudice" test for leave to file successive petition under Section 122-1(f); also, motion is barred by res judicata. Court properly denied Defendant's motion seeking leave to file a successive postconviction petition, as he did not establish his right to obtain leave to file it.(CONNORS and HARRIS, concurring.)

People v. Russell, 2016 IL App (3d) 140386 (April 20, 2016) Peoria Co. (O'BRIEN) Reversed and remanded.
Defendant filed postconviction petition after his conviction for first-degree murder was affirmed on direct appeal. Court erred in dismissing petition at second stage. Postconviction counsel's failure to make routine amendment to postconviction petition to allege ineffective assistance of counsel prevented circuit court from considering merits of Defendant's claim's. This failure contributed directly to dismissal of petition without evidentiary hearing, and rebutted presumption of reasonable assistance created by filing of certificate of compliance with Rule 651(c). (LYTTON and McDADE, concurring.)

PRIVILEGE

People v. Shepherd, 2015 IL App (3d) 140192 (February 11, 2015) Will Co. (CARTER) Reversed and remanded.
Defendant was charged with solicitation of murder for hire. Court erred in granting Defendant's motion to suppress evidence that State had allegedly obtained by taking advantage of alleged ethical violations of attorney that Defendant had consulted with about case but had not retained. Although Defendant was a prospective client of attorney as defined in Rule 1.18(a) of Rules of Professional Conduct, Defendant failed to raise before trial court that he had formed attorney-client relationship with him, and thus cannot advance that argument as basis to affirm appeal. Defendant failed to show that attorney received from Defendant information that could be significantly harmful to Defendant in either of two cases. (LYTTON and O'BRIEN, concurring.)

People v. Ross, 2015 Il App (3d) 130077 (September 18, 2015) Rock Island Co. (O'BRIEN) Reversed and remanded.
Defendant pled guilty to felony murder and sentenced to 60 years. Defendant was denied reasonable assistance of postconviction counsel, as counsel filed no affidavits or depositions and offered no oral testimony or other evidence to support Defendant's ineffective assistance of counsel claim based on his trial counsel's wrong advice about applicability to Defendant's sentencing of truth-in-sentencing amendments. Postconviction counsel failed to comply with Rule 651(c), in failing to make all necessary amendments to pro se petition.(HOLDRIDGE, concurring; SCHMIDT, concurring in part and dissenting in part.)

People v. Robinson, 2015 IL App (4th) 130815 (October 2, 2015) Douglas Co. (APPLETON) Affirmed.
Defendant filed amended petition for postconviction relief, and court granted State's motion to dismiss on ground of untimeliness. Failure of Defendant's counsel on direct appeal to notify him of issuance on direct appeal does not show lack of culpable negligence on Defendant's part, as Defendant failed to make a fully reasoned explication of Section 122-1(c) of Post-Conviction Hearing Act. Defendant failed to explain to Appellate Court what triggers running of the period

of limitation, what the period of limitation, and how the issuance of decidion on direct appeal relates to that trigger. Without such explanation, Appellate Court cannot address issue of culpable negligence. (KNECHT and HOLDER WHITE, concurring.)

People v. Blanchard, 2015 IL App (1st) 132281 (October 13, 2015) Cook Co., 2d Div. (PIERCE) Remanded; dismissal vacated.
Defendant was convicted of armed robbery, and alleged that his appointed postconviction counsel provided unreasonable assistance under Supreme Court Rule 651(c) by failing to review trial exhibits that contained evidence crucial to his pro se claims. Remanded to trial court to allow postconviction counsel to comply with Rule 651(c) requirements as to exhibits, and to allow a supplemental certificate to be filed, if requested; and circuit court directed to then reconsider Defendant's petition or amended petition. (NEVILLE and SIMON, concurring.)

People v. Peterson, 2015 IL App (3d) 130157 (November 12, 2015) Will Co. (CARTER) Affirmed.
Defendant was convicted, after jury trial, of first degree murder of his 3rd ex-wife and sentenced to 38 years in prison. Evidence was sufficient to prove beyond a reasonable doubt that Defendant committed first-degree murder. Court did not err in finding that clergy privilege was inapplicable to pastor's testimony about what Defendant's 4th wife, who disappeared 3 years after 3rd ex-wife's death, had told him at her counseling session 2 months before her disappearance. Court properly found conversation was not confidential, as it was in public with at least one other person present. Court's prior ruling admitting certain statements of 2 victims under common law doctrine of FBWD (forfeiture by wrongdoing) stands as the law of the case. Use of statements was not so extremely unfair to Defendant that their admission violated Defendant's due process right to a fair trial. Court's ruling admitting testimony of a person who testified that Defendant had tried to hire him to kill 3rd ex-wife was within its discretion. Defense attorney did not have a per se conflict of interest in representing Defendant as a result of media rights contract which Defendant and defense attorney jointly co-signed and which began and ended before Defendant was indicted. Decision to call 4th ex-wife's divorce attorney was a matter of trial strategy as Defendant was seeking to discredit impression of her that pastor's testimony had given to jury, and was largely cumulative to pastor's testimony.(O'BRIEN and SCHMIDT, concurring.)

PROSECUTORIAL MISCONDUCT

People v. Haynes, 2015 IL App (3d) 130091 (January 13, 2015) Kankakee Co. (McDADE) Reversed and remanded.
Defendant filed pro se postconviction petition claiming that prosecution suborned perjury of a proffered 11-year-old witness, who was cousin of Assistant State's Attorney who was co-counsel during his criminal trial. Affidavit of witness offered by witness stated that shooting victim did have a gun, but that he was told to say that he did not have a gun. Affidavit, if true, renders

witness' entire testimony reliable. A witness's testimony is entirely unreliable if he is under instructions from a prosecutor to lie or to omit certain facts while testifying. (HOLDRIDGE, concurring; LYTTON, specially concurring.)

People v. Williams, 2015 IL App (1st) 122745 (March 31, 2015) Cook Co., 2d Div. (SIMON) Reversed and remanded.
(Modified upon denial of rehearing 5/5/15.) Prosecution made impermissible argument in criminal case for drive-by shooting in apparent gang dispute. Prosecutor improperly vouched, saying, "When a gang member comes before us and is charged with an offense, we don't just take everything he says for truth immediately, we check it out." This statement urged jury to believe his witness over Defendant because of government's verification of witness' version of event. Testimony thus became that of prosecutor rather than that of witness. Prosecutor impermissibly implied that he knew something that jury did not, but implication had no evidentiary basis.(PIERCE and LIU, concurring.)

People v. Risper, 2015 IL App (1st) 130993 (June 4, 2015) Cook Co., 4th Div. (ELLIS) Affirmed.
Defendant was convicted, after jury trial, of attempted robbery. Three references made at trial (one in opening statement and two during police officer testimony) to a nontestifying witness's identification of Defendant as a culprit was error, but errors were harmless beyond a reasonable doubt. If a Defendant cannot establish that callenged testimony is hearsay, he cannot prevail on a claim under confrontation clause. In two instances where Defendant objected, court promptly ruled, sustaining objection to one officer's testimony and instructing jury to disregard it, and instructing jury to consider testiony only as to detective's course of conduct and not as to truth of statements made to him by nontestifying witnesses. Court twice instructed jury that opening statements are not evidence. State presented strong evidence of Defendant's guilt, and errors did not deny Defendant right to fair trial. (HOWSE and COBBS, concurring.)

People v. Ringland, 2015 IL App (3d) 130523 (June 3, 2015) LaSalle Co. (SCHMIDT) Affirmed.
Defendants were each charged separately of felony drug offenses as a result of evidence obtained following traffic stops conducted by State's Attorney's special investigator in LaSalle County. State's Attorney's Felony Enforcement ("SAFE") unit's conduct falls well outside duties contemplated by Section 3-9005(b) of Counties Code, which grants State's Atotrneys authority to appoint a special investigator. Failure to comply with fingerprint requirements of statute meant that this special investigator was not authorized to act as a peace officer on date of incidents. Thus, court properly granted motions to suppress. (LYTTON and O'BRIEN, concurring.)

People v. Trotter, 2015 IL App (1st) 131096 (June 30, 2015) Cook Co., 4th Div. (COBBS) Affirmed.
Defendant was convicted, after jury trial, of murder and sentenced to natural life in prison. No misconduct during closing argument when prosecutor noted that victim had just moved to

Chicago to start a life with her fiance, as prosecutor was commenting on evidence properly presented at trial as to victim's background and relevant details of her life prior to her murder. Defendant definitively invoked his right of self-representation. A defendant has either the right to counsel or the right to represent himself, and is thus not entitled to hybrid representation whereby he would receive services of counsel and still be permitted to file pro se motions.(FITZGERALD SMITH and HOWSE, concurring.)

People v. Herndon, 2015 IL App (1st) 123375 (July 21, 2015) Cook Co., 2d Div. (PIERCE) Affirmed.
Defendant was convicted, after jury trial, of delivery of a controlled substance and sentenced to 10 years. Although Defendant was not specifically informed that he would be sentenced as a Class X offender if he was found guilty, Defendant was correctly admonished as to minimum and maximum extended term sentence he faced as a Class X offender.This admonishment was substantially compliant with Rule 401(a). Prosecutor's comments in closing argument about impact of Defendant's narcotics sales on families living nearby properly focused on negative effects of Defendant's conduct and not on crime in society at large. Prosecutor's minor misttatement in closing that witness testified that he tested three separate samples of controlled substance, when he actually testified that he had tested two samples, was not error. (SIMON and NEVILLE, concurring.)

People v. Thompson, 2015 IL App (1st) 122265 (August 5, 2015) Cook Co., 3d Div. (HYMAN) Affirmed.
Defendant was convicted, after jury trial, of burglary, and sentenced to 18 years. State's closing argument did not result in substantial prejudice or constitute a material factor in Defendant's conviction. No error in State's remarks in closing about the reasonable doubt standard, and arguments by defense counsel invited State's response. Although State's remarks in closing that Defendant was trying to "evade his responsibility" was improper, evidence was not close and no prejudice resulted from remarks. (LAVIN and MASON, concurring.)

People v. Burgess, 2015 IL App (1st) 130657 (August 14, 2015) Cook Co., 5th Div. (GORDON) Affirmed.
Defendant, then an HR Director, was convicted, after jury trial, of aggravated criminal sexual assault, criminal sexual assault, and unlawful restraint of a 15-year-old summer employee of his employer, and received concurrent sentences of 24, 15, and 3 years. As both sides presented testimony that witnesses for the other side were lying, and both sides argued in closing that their witnesses were more believable, comment made by State as to burden of proof, in rebuttal at closing, did not create substantial prejudice against Defendant. Court within its discretion in sentencing within statutory range, as court considered multiple factors and evidence showed that minor suffered psychological harm from assaults. (PALMER and REYES, concurring.)

People v. Kelley, 2015 IL App (1st) 132782 (September 18, 2015) Cook Co., 5th Div. (GORDON) Affirmed.
Defendant was convicted, after jury trial, of first-degree murder and sentenced to 35 years. State's apparent purpose in questioning witnesses was to answer doubts raised by cross-examination in eliciting testimony from its experts that Defendant could have requested evidence to be tested. State's remarks in rebuttal closing were not error; State was reminding jury that case was not a referendum on propriety of victim's life but trial on question of who murdered the victim. State made a few solitary remarks about defense counsel's motives, and did not create theme of disparaging defense counsel. (REYES and PALMER, concurring.)

People v. Moody, 2015 IL App (1st) 130071 (October 29, 2015) Cook Co., 1st Div. (COBBS) Affirmed in part and reversed in part; remanded with instructions.
Defendant was convicted of first degree murder and aggravated kidnapping pursuant to Section 10-2(a)(3) of Criminal Code, and sentenced to consecutive terms of 60 years and 25 years. Prosecutor did not commit reversible error in discussing reasonable doubt standard during closing arguments, or in statements as to presumption of innocence, as comments did not diminish burden of proof. Two isolated instances of prosecutor making improper comments did not constitute pervasive pattern of prosecutorial misconduct depriving Defendant of fair trial. (HOWSE and ELLIS, concurring.)

People v. McGee, 2015 IL App (1st) 130367 (October 29, 2015) Cook Co., 4th Div. (COBBS) Affirmed in part and reversed in part; remanded with instruction.
Defendant was convicted of first degree murder and aggravated kidnapping and sentenced to consecutive terms of 60 years and 25 years in prison. Defendant was lawfully seized, and thus lineup identifications were properly admitted into evidence. Prosecutor sought to discuss reasonable doubt standard in terms which did not diminish its burden of proof, and thus statements in closing arguments were not reversible error. (HOWSE and ELLIS, concurring.)

People v. Vanderark, 2015 IL App (2d) 130790 (December 23, 2015) DuPage Co. (SCHOSTOK) Affirmed.
Defendant was convicted of 3 counts of solicitation of murder for hire and sentenced to 40 years. Among his alleged intended victims were trial judge and ASA who prosecuted him for Aggravated DUI. Court within its discretion in denying Defendant's motion to appoint special prosecutor, as Defendant offered no reason other than that one alleged intended victim was an ASA. That ASA was not involved in, and her testimony was not needed for, prosecution of Defendant for these offenses.(JORGENSEN and SPENCE, concurring.)

People v. Ealy, 2015 IL App (2d) 131106 (December 29, 2015) Lake Co. (BURKE) Affirmed.
Defendant was convicted, after jury trial, of first-degree murder and sentenced to natural life. State may not introduce evidence that accused exercised his constitutional right to be free from unreasonable searches and seizures, by refusing DNA testing, because prejudicial effect

substantially outweighs probative value of allowing jury to infer the accused's consciousness of guilt from his exercise of his rights. However, in this case the error was harless beyond a reasonable doubt. State introduced overwhelming circumstantial evidence of Defendant's guilt, such that prejudicial testimony that he refused DNA testing did not contribute to conviction, especially because Defendant's DNA was not found at crime scene.(HUTCHINSON and ZENOFF, concurring.)

People v. Mpulamasaka, 2016 IL App (2d) 130703 (January 6, 2016) Lake Co. (BIRKETT) Reversed.
(Court opinion corrected 2/17/16.) Defendant was convicted, after jury trial, of aggravated criminal sexual assault, and sentenced to 12 years. State failed to disprove defense of consent by the victim, who testified that she held hands with Defendant and guided his hand to her thigh. Evidence was sufficient to raise affirmative defense of consent. There was no evidence that victim was confused during cross-examination, or that she lacked capacity to understand defense counsel's questions or recall events. By telling jury that they should ignore victim's cross-examination testimony because it was not "her own words", the State undermined Defendant's right to fair trial. Prosecutor committed prosecutorial misconduct, which severly prejudiced Defendant's case, when he sat in witness stand while making closing and rebuttal argument about victim's courage in testifying, and then commented on Defendant's "credibility", although Defendant did not testify. (HUTCHINSON, concurring; BURKE, specially concurring.)

People v. Thompson, 2016 IL App (1st) 133648 (March 8, 2016) Cook Co., 2d Div. (HYMAN) Affirmed.
(Court opinion corrected 3/10/16.) Defendant and a codefendant were convicted, after separate jury trials, of first degree murder and attempted first degree murder, for shooting of 16-year-old and 15-year-old cousins in front of their home. Potential problems with identifications of 3 State witnesses were presented to jury. Prior consistent statement of victim's brother to his father identifying Defendant and codefendant as the shooters was properly admitted when testified to by that witness as a statement of identification. Police officer's testimony as to the statement should not have been admitted, but any error was harmless. State's remarks in opening statements and closing arguments were questionable but do not rise ot level of clear and obvious error.(NEVILLE and SIMON, concurring.)

People v. Effinger, 2016 IL App (3d) 140203 (March 28, 2016) Will Co. (LYTTON) Affirmed.
Defendant was convicted of aggravated battery, for grabbing (and then releasing) the hand of a middle school student as she was walking to middle school on a public sidewalk. Although court erred in admitting evidence that assistant principal believed that Defendant was "grooming" victim, as such evidence was irrelevant to charged offense, any error was harmless. State impermissibly vouched for victim's credibility in arguing that victim was credible and that State believed she was credible. Evidence was not closely balanced, and jury was instructed that arguments were not evidence and that only they were the judges of believability of witnesses.

Thus, erroneous statements did not severely threaten to tip scales of justice against Defendant.(CARTER, concurring; McDADE, dissenting.)

¿QUE?

People v. Argueta, 2015 IL App (1st) 123393 (July 8, 2015) Cook Co., 3d Div. (HYMAN) Affirmed.
Defendant was convicted, after bench trial, of various criminal sexual assault offenses. After State had rested, court properly refused Defendant's request for interpreter for his own testimony at trial. Defendant, a Spanish speaker and El Salvador citizen who described himself as "bilingual", repeatedly declined interpreter during numerous interactions with court in year prior to trial. Defense counsel and Defendant both told court that he understood and spoke English and did not need an interpreter; record supports finding that Defendant was capable of testifying in English. (PUCINSKI and LAVIN, concurring.)

RIGHT TO COUNSEL

People v Jones, 2015 IL App (2d) 120717 (February 3, 2015) Winnebago Co. (SCHOSTOK) Affirmed in part and vacated in part.
Defendant was convicted, after jury trial, of 12 counts of first-degree murder, and attempted first-degree murder, 4 counts of home invasion, and residential burglary. Court did not improperly admonish Defendant that if he waived his right to counsel that he would not be able to have counsel reappointed in middle of trial, and court did not intimidate Defendant into foregoing his right to self-representation (HUTCHINSON and BURKE, concurring.)

People v. Wright, 2015 IL App (1st) 123496 (May 21, 2015) Cook Co., 4th Div. (COBBS) Reversed and remanded with instructions.
Defendant was convicted, after jury trial, of four counts of armed robbery while armed with a firearm. Court's pretrial admonishments failed to substantially comply with Rule 401(a) prior to accepting Defendant's waiver of counsel, as court never gave accurate statement of maximum punishment prior to waiver of counsel, and no evidence that Defendant was aware of penalty. (FITZGERALD SMITH and ELLIS, concurring.)

People v. Lewis, 2015 IL App (1st) 130171 (May 12, 2015) Cook Co., 2d Div. (PIERCE) Affirmed.
Defendant was convicted, after jury trial, of armed robbery and unlawful vehicular invasion. Jury instructions properly identified standard of reasonable doubt, and cured any possible error in court's comments prior to instructions.Extradition proceedings were procedural, aimed at transferring Defendant to Illinois pursuant to arrest warrant, and thus there was no judicial

involvement in adversary proceedings against him, and no sixth amendment right to counsel yet attached. Court properly denied defendant's motion to suppress identification, and no plain error. Defense counsel's analogy, in closing argument, comparing reasonable doubt standard to a football game fell below objective standard of reasonableness, but Defendant suffered no prejudice as jury instructions after closing arguments cured any potential confusion as to reasonable doubt.(SIMON and LIU, concurring.)

People v. Brzowski, 2015 IL App (3d) 120376 (May 18, 2015) Will Co. (LYTTON) Reversed and remanded.
(Court opinion corrected 6/2/15.) Defendant was charged with two counts of unlawful violations of order of protection for sending mail to his two sons, and later charged with two more counts for sending mail to his ex-wife. Defendant was denied his right to counsel at both trials. Court excused Defendant's standby counsel prior to jury deliberations, a critical stage in trial, which was prejudicial and abuse of discretion. Court denied Defendant his right to have counsel appointed in telling Defendant that he could not proceed with his current assistant public defender (despite public defender's office having indicated that it had no objection to Defendant being represented by his same assistant public defender), but could only proceed pro se, hire a new attorney or convince his attorney to provide him pro bono representation. (McDADE and WRIGHT, concurring.)

People v. Trotter, 2015 IL App (1st) 131096 (June 30, 2015) Cook Co., 4th Div. (COBBS) Affirmed.
Defendant was convicted, after jury trial, of murder and sentenced to natural life in prison. No misconduct during closing argument when prosecutor noted that victim had just moved to Chicago to start a life with her fiance, as prosecutor was commenting on evidence properly presented at trial as to victim's background and relevant details of her life prior to her murder. Defendant definitively invoked his right of self-representation. A defendant has either the right to counsel or the right to represent himself, and is thus not entitled to hybrid representation whereby he would receive services of counsel and still be permitted to file pro se motions.(FITZGERALD SMITH and HOWSE, concurring.)

People v. Bartholomew, 2015 IL App (4th) 130575 (July 7, 2015) McLean Co. (HARRIS) Reversed and remanded.
Jury convicted Defendant of aggravated batter and battery. Court failed to substantially comply with Supreme Court Rule 401(a), prior to allowing him to proceed pro se. Court did not address any of the three elements required by Rule 401(a) prior to allowing him to proceed pro se during defense portion of trial. Thus, his waiver of counsel was ineffective, and conviction and sentence are reversed. (POPE and HOLDER WHITE, concurring.)

People v. Mitchell, 2016 IL App (2d) 140057 (March 8, 2016) Kane Co. (BIRKETT) Vacated and remanded.
Court denied Defendant's motion to withdraw his negotiated guilty plea to possession of a controlled substance and resisting a peace officer. Counsel was initially appointed for Defendant, but Defendant later waived his right to counsel. Whether Defendant revoked his waiver of right to counsel, and thus whether trial judge was obligated to reappoint counsel, is not clear from the record. Judge did not suggest appointing a different attorney within the public defender's office, and focus of Defendant's dissatisfaction was with the assistant public defender appointed to him. (SCHOSTOK and ZENOFF, concurring.)

People v. Adams, 2016 IL App (1st) 141135 (March 15, 2016) Cook Co., 2d Div. (HYMAN) Reversed and remanded with directions.
Court abused its discretion in denying request of Defendant, who had been indicted for delivery of a controlled substance 70 days prior, on day set for bench trial that case be continued so he could retain private counsel. Court erred in failing to inquire into Defendant's reasons for wanting new counsel or any efforts he made to find new counsel. Defendant had never previously requested continuance, and no evidence that request was a delay tactic.(NEVILLE and SIMON, concurring.)

SEARCH & SEIZURE (auto)

People v. Simpson, 2015 IL App (1st) 130303 (March 11, 2015) Cook Co., 3d Div. (HYMAN) Affirmed.
Defendant and his codefendant were convicted after bench trial of four counts of home invasion with guns, while residents were in the house. Court properly denied pretrial motion to quash arrest and suppress evidence. Police stopped codefendants in early morning hours, immediately after receiving dispatch that suspects from a home invasion were fleeing in a car which matched their description, on the road and in the direction where they were travelling; no other vehicles were on the road. Reasonable suspicion for Terry stop can be derived, in part, when police observe persons similar to those believed fleeing from recent crime scene when found in general area where suspects would be expected. Patdown search was justified given that home invasion by two armed perpetrators is inherently dangerous crime. (LAVIN and MASON, concurring.)

People v. Irby, 2015 IL App (3d) 130429 (May 11, 2015) Peoria Co. (SCHMIDT) Reversed.
Defendant was convicted, after stipulated bench trial, of aggravated unlawful use of a weapon, and sentenced to 6 years and 3 years MSR.Court properly denied Defendant's motion to suppress, as officer did not effectuate a seizure of Defendant until after he had reasonable, articulable suspicion of criminal activity. State had burden of proving that gun was uncased, as element of offense, but failed to do so. Court cannot infer that gun was uncased based on

Defendant's decision not to present evidence that gun was cased.(LYTTON and O'BRIEN, concurring.)

People v. LeFlore, 2015 IL 116799 (May 21, 2015) Kane Co. (THOMAS) Appellate court affirmed in part and reversed in part; circuit court affirmed in part and reversed in part; remanded.
Defendant, who was convicted of aggravated robbery, robbery, and burglary, had filed pretrial motion to quash arrest and suppress evidence, arguing that police improperly used a GPS device without a warrant to track movements of a vehicle he used. Even where a fourth amendment violation has occurred, evidence that resulted will not be suppressed when good-faith exception to exclusionary rule applies. In this case, good-faith exception to exclusionary rule applies, and evidence obtained against Defendant should not be excluded. At time when detective placed GPS on vehicle in April 2009, U.S. Supreme Court's decisions were "binding appellate precedent" that detective could have reasonably relied upon. In the alternative, it would have been objectively reasonable for police to rely upon legal landscape and constitutional norm in existence at time of search that allowed warrantless attachment and use of GPS technology. (GARMAN, KILBRIDE, and KARMEIER, concurring; BURKE, FREEMAN, and THEIS, dissenting.)

People v. Smith, 2015 IL App (1st) 131307 (May 29, 2015) Cook Co., 5th Div. (McBRIDE) Reversed.
Defendant was convicted, after jury trial, of aggravated unlawful use of a weapon (AUUW) and unlawful use of a weapon by a felon (UUWF), and sentenced to concurrent terms of nine years. Officer stopped Defendant for running stop sign, and while approaching his vehicle officer observed Defendant making a "furtive movement" toward rear of passenger seat. Officer then searched car and found handgun and live ammunition. Officer offered no specific facts to support his belief that he asked Defendant and passenger to step out of the vehicle because he feared for his safety. Based on Defendant's movement in the car, there was no reasonable basis for officer to engage in search of vehicle, and thus court erred in denying Defendant's motion to quash arrest and suppress evidence. (PALMER and REYES, concurring.)

People v. Gaytan, 2015 IL 116223 (May 21, 2015) McLean Co. (BURKE) Appellate court reversed; circuit court affirmed.
(Correcting court designation.) An objectively reasonable, though mistaken, belief as to the meaning of a law may form basis for costitutionally valid vehicle stop under Illinois constitution. It was objectively reasonable for officers to believe that trailer hitch, on vehicle in which Defendant was a passenger, violated Section 3-413(b) of Vehicle Code. Thus, traffic stop was constitutionally valid under state and federal constitutions. Section 3-413(b) is ambiguous and, applying rule of lenity, it prohibits only materials which are attached to a license plate, and thus a trailer hitch does not violate that section. (GARMAN, FREEMAN, THOMAS, KILBRIDE, KARMEIER, and THEIS, concurring.)

People v. Pulling, 2015 IL App (3d) 140516 (June 17, 2015) Henry Co. (McDADE) Affirmed. Court properly found that traffic stop was unreasonably prolonged prior to canine alert, and thus properly granted motion to suppress crack cocaine located in vehicle trunk.Officer unlawfully prolonged duration of investigative stop when he interrupted his traffic citation prepartion to conduct a free-air canine sniff based on unparticularized suspicion of criminal activity. Officer's deviation from purpose of stop to conduct drug investigation was not supported by independent reasonable suspicion and thus unlawfully prolonged duration of stop.(CARTER and O'BRIEN, concurring.)

People v. Collins, 2015 IL App (1st) 131145 (September 16, 2015) Cook Co., 3d Div. (LAVIN) Affirmed in part and vacated in part.
Defendant was convicted, after jury trial, of possession of controlled substance and possession of a controlled substance with intent to deliver, and was sentenced as a habitual criminal to natural life. Court properly denied Defendant's motion to quash arrest and suppress evidence, and Defendant cannot show that his sentence is unconstitutional. Conviction for possession of controlled substance is vacated as it is a lesser-included offense of possession with intent to deliver. Evidence at motion to suppress hearing did not show that any conduct of officer unreasonably prolonged encounter. Officer testified that he found Defendant's explanation of his route illogical, creating additional suspicion. It was reasonable for officer to ask whether Defendant had narcotics in car, upon learning that Defendant was on MSR for possession of cocaine conviction. (PUCHINSKI, concurring; HYMAN, dissenting in part.)

People v. Litwin, 2015 Il App (3d) 140429 (September 17, 2015) LaSalle Co. (McDADE) Reversed.
Defendant was convicted of unlawful cannabis trafficking and sentenced to 12 years. Court's conclusion that arresting officer was credible is not entitled to deference, as that conclusion was clearly against manifest weight of evidence. Officer was not credible as to whether he smelled cannabis emanating from Defendant's vehicle. Thus, officer was not justified in prolonging during of traffic stop for improper lane usage. Thus, court erred in denying motion to quash arrest and suppress evidence. (O'BRIEN, concurring; CARTER, dissenting.)

People v. Bravo, 2015 IL App (1st) 130145 (September 22, 2015) Cook Co., 2d Div. (NEVILLE) Affirmed.
DEA agents, without judicial authorization, installed a GPS tracking device on Defendant's car. Court properly granted motion to quash Defendant's arrest (a month later, for possession of marijuana with intent to deliver), and to suppress evidence. State failed to show that police acted in good faith when they installed GPS device on Defendant's car. Police failed to ask any attorney for advice on meaning of 7th Circuit's 2007 Garcia decision, and failed to show any grounds to suspect Defendant of criminal activity. (SIMON, concurring; LIU, specially concurring.)

People v. Reedy, 2015 IL App (3d) 130955 (August 26, 2015) Will Co. (SCHMIDT) Reversed and remanded.
(Court opinion corrected 9/30/15.) Police officers conducted traffic stop after twice observing passenger-side tires of Defendants' vehicle completely cross over solid white fog line on right side of road, first on entrance ramp and then while on interstate. Defendants were found in possession of at least 900 grams of heroin in duffel bag found on front passenger-seat floorboard, after dog sniff of exterior of vehicle. Court erred in granting dual motions to suppress heroin. Probable cause existed for stop, as Vehicle Code prohibits driving on shoulder. Traffic stop was not unduly delayed, as trained narcotics canine arrived less than 5 minutes after stop, and before purpose of stop was completed, and traffic stop last less than 10 minutes.(HOLDRIDGE, concurring; LYTTON, specially concurring.)

People v. Collins, 2015 IL App (1st) 131145 (September 16, 2015) Cook Co., 3d Div. (LAVIN) Affirmed in part and vacated in part.
(Court opinion corrected 10/8/15.) Defendant was convicted, after jury trial, of possession of controlled substance and possession of a controlled substance with intent to deliver, and was sentenced as a habitual criminal to natural life. Court properly denied Defendant's motion to quash arrest and suppress evidence, and Defendant cannot show that his sentence is unconstitutional. Evidence at motion to suppress hearing did not show that any conduct of officer unreasonably prolonged encounter. Officer testified that he found Defendant's explanation of his route illogical, creating additional suspicion. It was reasonable for officer to ask whether Defendant had narcotics in car, upon learning that Defendant was on MSR for possession of cocaine conviction. (PUCHINSKI, concurring; HYMAN, dissenting in part.)

People v. Jones, 2015 IL App (1st) 142997 (December 8, 2015) Cook Co., 2d Div. (HYMAN) Affirmed.
Police stopped Defendant for running red light, then officer returned to his police car and returned to squad car to check status of his drivers license and learned of active investigative alert for Defendant involving a homicide. Defendant was then placed in back seat of squad car, and another officer, looking through backseat window, saw brick of cocaine in back seat. That officer, without permission, then entered Defendant's car and retrieved cocaine. Search of Defendant's vehicle was not a valid search incident to arrest, as Defendant was not in custody, and thus officer had no grounds for securing Defendant's car. Discovery of cocaine stems directly from Defendant's improper detention and thus was properly suppressed. (PIERCE and NEVILLE, concurring.)

People v. Maberry, 2015 IL App (2d) 150341 (December 23, 2015) DeKalb Co. (BIRKETT) Reversed and remanded.
Defendant was charged with DUI, possession of drug paraphernalia, and following too closely. Court erred in granting Defendant's motion to suppress. Uncontested testimony that Defendant followed officer's squad car at an interval of a car-length or less for the distance of a football

field while travelling 30-35 mph. Officer Defendant's vehicle based on his observation and opinion that defendant was following him at an unsafe distance, and officer's observation justified an investigatory traffic stop. (McLAREN and HUDSON, concurring.)

People v. Cummings, 2016 IL 115769 (January 22, 2016) Whiteside Co. (GARMAN) Appellate court reversed; circuit court reversed; remanded.
A driver's license request of a lawfully stopped driver is permissible irrespective of whether that request directly relates to the purpose for the stop. Interest in officer safety permits a driver's license request of a driver lawfully stopped, and such ordinary inquiries are part of the stop's mission and do not prolong the stop for fourth amendment purposes. (FREEMAN, THOMAS, KILBRIDE, KARMEIER, BURKE, and THEIS, concurring.)

People v. Zayed, 2016 IL App (3d) 140780 (February 24, 2016) Will Co. (McDADE) Affirmed.
Defendant was charged with unlawful possession of a controlled substance, found after pat-down search and then strip search. Court properly granted Defendant's motion to suppress evidence. Officer had probable cause to conduct a search of Defendant, given that when he approached his car (stopped for failure to use turn signal), he immediately smelled very strong odor of burnt cannabis coming from vehicle. However, officer's strip search of Defendant was unreasonable. Officer's attempted steps to reduce intrusiveness of search were inadequate; search was conducted on a residential street on which numerous vehicles passed during stop and search, and streetlights provided some illumination of area.(O'BRIEN and HOLDRIDGE, concurring.)

People v. Timmsen, 2016 IL 118181 (March 24, 2016) Hancock Co. (FREEMAN) Appellate court reversed; circuit court affirmed.
Defendant, who had just crossed into Illinois from Iowa at 1:15 a.m., made a U-turn 50 feet in front of a police roadblock, using a railroad crossing which was the only place to turn around before reaching the roadblock; roadblock, which was well-marked and which was not busy. Deputy, emerging from roadblock, stopped him and discovered his license was suspended. Under totality of circumstances, there was reasonable suspicion to conduct an investigatory stop of Defendant's vehicle. Thus, circuit court properly denied Defendant's motion to suppress evidence. Avoidance of roadblock is only one factor in determining existence of reasonable suspicion. (GARMAN, KILBRIDE, KARMEIER, and THEIS, concurring; THOMAS, specially concurring; BURKE, dissenting.)

SEARCH & SEIZURE (place)

People v. Cannon, 2015 IL App (3d) 130672 (January 7, 2015) Will Co. (LYTTON) Reversed.
Defendant, age 19 at time of charge, was convicted, after bench trial, of unlawful consumption of alcohol by a minor. Court properly granted Defendant's motion to suppress evidence. Police officer walked onto back deck of Defendant's mother's house, without a warrant. Entry onto back

deck was reasonable, to ask homeowner about noise complaint, and officer could hear noise coming from back deck. State failed to prove that Defendant was not directly supervised by his mother while he was drinking alcohol, and thus State failed to prove that Defendant did not fall within exemption of the Liquor Control Act for minors drinking under supervision of a parent within the privacy of a home. (O'BRIEN, concurring; SCHMIDT, concurring in part and dissenting in part.)

People v. Burns, 2015 IL App (4th) 140006 (January 30, 2015) Champaign Co. (KNECHT) Affirmed.
Warrantless use of a drug detection dog to sniff Defendant's apartment door, within a locked 3-story, 12-unit apartment building, at 3:20 a.m. affected judge's decision to issue search warrant, and evidence obtained pursuant to search warrant is fruit of the poisonous tree and the exclusionary rule applies. Court properly granted Defendant's motion to suppress. Area where police stood, at entrance to Defendant's apartment with drug-detection dog, was a constitutionally protected area, where there was no implicit invitation for the police to be. (TURNER and APPLETON, concurring.)

People v. Brown, 2015 IL App (1st) 140093 (March 31, 2015) Cook Co., 3d Div. (MASON) Affirmed.
Defendant was indicted on multiple counts related to possession of controlled substance and a weapon. Without a warrant, officers entered common area of Defendant's apartment building by walking through front entrance door which required key to open but which was not pulled all the way shut. Officers' canine gave positive alert at front and back doors of Defendant's apartment. Judge later approved search warrant based on canine sniff of apartment doors. Court properly granted Defendant's motion to quash search warrant and suppress evidence, as police officers' execution of search warrant was not protected under good-faith exception to exclusionary rule. At the time of search, law as to constitutionality of warrantless canine sniff within curtilage of home was not settled, and was later declared unconstitutional. (PUCINSKI and HYMAN, concurring.)

People v. Pettis, 2015 IL App (4th) 140176 (May 14, 2015) Champaign Co. (HOLDER WHITE) Reversed and remanded.
Defendant was charged by information with armed habitual criminal, aggravated unlawful possession of a firearm by a felon, and reckless discharge of a firearm. Judge issuing search warrant had substantial basis to conclude probable cause existed. Officers responded to "shots fired" call in early morning, and suspect had fled scene, and officers had information on suspect, incident, and vehicle from an identified witness, and judge drew reasonable inference from affidavits that Defendant violated law and that evidence of crime committed could be found inside his residence. Good-faith exception arises only after court determines that search warrant was improperly issued for lack of probable cause. (HARRIS, concurring; APPLETON, dissenting.)

People v. Valle, 2015 IL App (2d) 131319 (June 11, 2015) Kane Co. (JORGENSEN) Affirmed.
Defendant was convicted, after bench trial, of unlawful possession of cocaine with intent to deliver. Court properly denied motion to quash arrest and suppress evidence seized from detached garage. Although warrant expressly authorized search of Defendant's residence, detached garage was within curtilage. Thus, detached garage was a proper object of the search. Had the issuing judge wished to exclude the garage, despite that case authority, he could have and would have done so expressly. (SCHOSTOK and BIRFKETT, concurring.)

People v. Harris, 2015 IL App (1st) 132162 (June 17, 2015) Cook Co., 3d Div. (MASON) Reversed and remanded.
(Correcting case citation and link.) Defendant was convicted, after jury trial, of possession of cannabis and sentenced to 24 months probation. Court erred in denying motion to quash Defendant's arrest and suppress evidence. Officers improperly executed search by arresting Defendant before he opened a package containing narcotics that had been fitted by police with electronic monitoring and breakaway filament device. Officers knew that device had produced no information that package had been opened, and possessed no prior knowledge connecting Defendant to package or its contents. Officers were aware of ambiguity reflected on face of warrant, which broadly authorized search of "S. Harris or anyone taking possession of" the package. Without any further information, officers could not have reasonably believed that warrant authorized a search of anyone who picked up package without opening it, and good faith exception does not apply.(LAVIN and HYMAN, concurring.)

People v. Moore, 2015 IL App (1st) 140051 (December 16, 2015) Cook Co., 3d Div. (PUCINSKI) Reversed.
Defendant was convicted, after bench trial, of unlawful possession of ammunition by a felon and one count of possession of a controlled substance (cocaine). State failed to establish that Defendant had exclusive and immediate control of area where contraband was recovered. Defendant was seen jumping out of window of house where contraband was recovered, but no proof that Defendant had immediate control over basement rafters in house, or of living room where bullets were found in desk drawer. Officer did not see Defendant handle contraband or discard anything while emerging through the window. Mail addressed to Defendant at that address, and men's clothing located in bedroom, were insufficient proof of immediate and exclusive control of those areas. (FITZGERALD SMITH and LAVIN, concurring.)

People v. Burns, 2016 IL 118973 (March 24, 2016) Champaign Co. (KILBRIDE) Circuit court affirmed.
Warantless use of a drug-detection dog at 3:20 a.m. at Defendant's apartment door, located within a locked apartment building, violated Defendant's rights under 4th Amendment. Good-faith exception to exclusionary rule does not apply, as at time of officers' conduct, binding 4th District precedent existed holding that common areas of locked apartment buildings are protected

by 4th Amendment. Third-floor landing, located directly outside of Defendant's apartment door and nature of its use is generally limited to Defendant, one neighbor, and their invitees; landing is of limited access and not observable by "people passing by." Thus, landing is curtilage. Absent the dog sniff, evidence relied on in complaint and affidavit for search warrant was insufficient to establish probable cause for search warrant of Defendant's home.(FREEMAN, BURKE, and THEIS, concurring; GARMAN, specially concurring; THOMAS and KARMEIER, dissenting.)

SEARCH & SEIZURE (person)

People v. Almond, 2015 IL 113817 (February 20, 2015) Cook Co. (KILBRIDE) Appellate court reversed in part and affirmed in part.
Defendant was arrested in a liquor store, found to have an uncased and loaded .38-caliber handgun in his waistband. Underlying incident, where police officers arrived at liquor store in squad car, in plain clothes but with badges visible, and then Defendant entered store, was a consensual encounter, as it was not coercive or unusual. No Fourth Amendment violation when officer searched Defendant for weapon after Defendant told him that he was armed. (FREEMAN, THOMAS, KARMEIER, BURKE, and THEIS, concurring.)

People v. Lake, 2015 IL App (4th) 130072 (March 16, 2015) Vermilion Co. (STEIGMANN) Affirmed.
Defendant, age 17 at time of offense, was convicted, after bench trial, with aggravated use of a weapon and defacing identification marks of a firearm. Defendant was not seized when officer approached him from behind, and tapped him on shoulder, while Defendant was walking back and forth and seemed to be acting as "lookout" in area near public housing project. Tapping was minimally intrusive way and socially accepted method to get his attention, and tap did not demonstrate authority sufficient to constitute an unreasonable seizure under fourth amendment. Defendant was not seized when officer blocked his path down the street and began asking him questions. Up to the point when Defendant willingly answered officer's questions, encounter was consensual. Possession of handguns by minors is conduct that falls outside scope of second amendment's protection. (HOLDER WHITE and APPLETON, concurring.)

People v. Shipp, 2015 IL App (2d) 130587 (April 8, 2015) Stephenson Co. (BIRKETT) Reversed and remanded.
Defendant was convicted of offenses of possession of cannabis, possession with intent to deliver controlled substance, unlawful possession of firearm by a felon and unlawful use of weapons. Defendant stated sufficient claim that his counsel on direct appeal was ineffective for failing to challenge denial of his motion to suppress. Trial court erred in failing to address validity of police officer's stop and attempted frisk and found that Defendant was resisting or obstructing police officer. No indication that officers were attempting to arrest Defendant when they reached

out to pat him down for weapons, and nothing indicates that officers had valid reason to arrest him at that point. Stop was based on nothing other than Defendant's mere presence in the area, and by time of attempted frisk, 911 callers, who had reported a fight, had told police that Defendant was not involved in crime, but officers frisked Defendant, he fled, and officers obtained contraband only after they chased and tackled him. Discovery of contraband was so tainted by illegal stop that suppression was appropriate. (HUTCHINSON and HUDSON, concurring.)

People v. Evans, 2015 IL App (1st) 130991 (June 8, 2015) Cook Co., 1st Div. (HARRIS)
Affirmed as modified.
Defendant was convicted, after bench trial, of possession of cannabis. State presented sufficient evidence to sustain conviction. Evidence showed that Defendant threw bag of cannabis into a room and shut the door before complying with officer's instructions to show his hands and to step toward him. Reasonable inference is that Defendant disposed of bag by throwing it. Where possession has been shown, inference of guilty knowledge can be drawn from surrounding facts and circumstances. (DELORT and CUNNINGHAM, concurring.)

People v. Butler, 2015 IL App (1st) 131870 (December 24, 2015) Cook Co., 4th Div. (COBBS)
Reversed and remanded.
Defendant was convicted, after bench trial, of second-degree murder. Court erred in denying Defendant's motion to suppress text message obtained after warrantless search of his cell phone; officer stated that he took Defendant's cell phone to try to find way to contact his family members as he had sustained gunshot wounds, and saw a text message. Cell phones implicate privacy concerns far beyond those implicated in searches of objects such as purses or wallets. Given that Defendant's privacy interest in his cell phone was so substantial, officer's actions in searching phone to contact family members do not fall under the community caretaking exception, as officer had less intrusive means at his disposal for same task. No showing of exigent circumstances to justify search. (HOUSE and ELLIS, concurring.)

People v. Smith, 2016 IL App (3d) 140648 (April 29, 2016) Rock Island Co. (SCHMIDT)
Reversed and remanded.
Defendants were each charged with one count of unlawful possession of a controlled substance and one count of unlawful possession of a hypodermic needle. Record lacks factors indicative of a seizure rather than a consensual encounter. Although officer testified that Defendants were not free to leave because he was conducting investigation, this was never conveyed to Defendants. Each of the requests of officers were requests rather than orders. Police encounter with one Defendant was consensual all the way through officer's search of him, and he was not seized, for 4th Amendment purposes, until officer placed him in handcuffs. At that point, having found heroin on his person, officer had probable cause to arrest him. When Defendant told officer that the other Defendant "must have put it there", given totality of circumstance, officer had

reasonable suspicion that other Defendant was involved in criminal activity. Thus court erred in granting Defendants' motions to suppress evidence. (CARTER and HOLDRIDGE, concurring.)

SEARCH & SEIZURE (warrant)

People v. Chambers, 2016 IL 117911 (January 22, 2016) Cook Co. (GARMAN) Appellate court affirmed; circuit court reversed.
A Franks hearing is not foreclosed on the sole basis that a confidential informant whose statements formed the basis for a warrant application appears before the judge at the warrant hearing. Appellate review of a trial court's ruling on a motion for a Franks hearing is de novo. Defendant made a substantial preliminary showing that a false statement was intentionally, knowingly, or recklessly included in the warrant affidavit, and he is, thus, entitled to a Franks hearing to determine whether the warrant must be quashed and the evidence obtained thereby suppressed. (FREEMAN, THOMAS, KILBRIDE, KARMEIER, BURKE, and THEIS, concurring.)

People v. Jarvis, 2016 IL App (2d) 141231 (February 23, 2016) Kane Co. (ZENOFF) Reversed and remanded.
Court erred in granting motion to suppress evidence found during a strip search conducted pursuant to search warrant. Because search warrant authorized a search of Defendant's person for narcotics, the strip search was within scope of warrant and did not violate 4th Amendment or Illinois Constitution's search-and-seizure clause or private clause.(SCHOSTOK and BIRKETT, concurring.)

SENTENCE (VOID)

People v. Castleberry, 2015 IL 116916 (November 19, 2015) Cook Co. (BURKE) Appellate court reversed; circuit court affirmed.
The "void sentence rule", which states that a sentence which does not conform to a statutory requirement is void, is no longer valid. Recent Illinois Supreme court decisions holding that voidness does not speak to mere error, but to lack of jurisdiction, have undermined the rationale behind the rule. Rule 604(a) does not permit State to appeal a sentencing order. Thus, State could not have cross-appealed in the appellate court on this issue, as a reviewing court acquires no greater jurisdiction on cross-appeal than it could on appeal. (GARMAN, FREEMAN, THOMAS, KILBRIDE, KARMEIER, and THEIS, concurring.)

People v. Gray, 2015 IL App (1st) 112572-B (November 18, 2015) Cook Co., 3d Div. (LAVIN) Affirmed.
Defendant was convicted, after jury trial, via accountability theory of 1993 first degree murder and attempted armed robbery committed when Defendant was age 16. As Defendant had previously convicted of first degree murder, he was sentenced to mandatory term of life imprisonment on his murder conviction and 15 years imprisonment on his attempted armed robbery conviction. Defendant's sentence is not void, and Defendant failed to file his Section 2-1401 petition within 2 years, and it is thus untimely. Sentence was authorized by statute and was required at time of Defendant's sentencing. (FITZGERALD SMITH and PUCINSKI, concurring.)

People v. Smith, 2016 IL App (1st) 140887 (March 1, 2016) Cook Co., 2d Div. (PIERCE) Affirmed as modified.
Defendant"s 60-year extended term sentence for aggravated criminal sexual assault and 40-year extended term sentences for home invasion and armed robbery are unauthorized by law, as trial court did not find the required factors listed in Section 5-5-3.2(b) of Unified Code of Corrections when it sentenced Defendant to extended term sentence. Illinois Supreme Court's 2015 decision in Castleberry, was abolished the void-sentence rule, did not announce a new rule, but reinstated the rule that a sentence that did not comply with statutory guidelines was only void if court lacked personal or subject matter jurisdiction. Thus, the Castleberry holding cannot be applied retroactively, and Defendant has the right to challenge his sentence for the first time on appeal. (NEVILLE and SIMON, concurring.)

People v. McDaniel, 2016 IL App (2d) 141061 (March 10, 2016) DuPage Co. (HUTCHINSON) Affirmed in part and vacated in part.
(Court opinion corrected 3/14/16.) Defendant was convicted of first-degree murder in shooting death of his wife. Court entered maximum available sentence of 60 years, with fines and fees. Defendant filed Section 2-1401 petition for relief from "void" judgment, arguing that because county clerk added mandatory $25 fine to his original sentence, his entire sentence was void. Based on Supreme Court's 2015 opinion in People v. Castleberry, there is no true voidness as alleged in Defendant's petition, but only a voidable $25 fine, which is no longer subject to collateral attack. So long as a Section 2-1401 petition challenges a judgment on voidness grounds, as did Defendant's petition, it is not subject to Section 2-1401's 2-year limitations period.(SCHOSTOK and SPENCE, concurring.)

SENTENCING (agg / mit)

People v. Scott, 2015 IL App (1st) 131503 (June 30, 2015) Cook Co., 3d Div. (HYMAN) Affirmed.
Defendant was convicted, after jury trial, of second degree murder and sentenced to 18 years. No substantial prejudice shown from prosecutor's rebuttal argument that Defendant fabricated his self-defense theory at trial three years after shooting, as remark was not a material factor in jury's verdict. No substantial prejudice resulted from defense counsel's failure to pursue motion in limine, as no reasonable probability that result of proceeding would have been different. Sentencing court did not abuse its discretion even though sentence was near upper range of permissible sentences. Court placed no emphasis on AUUW conviction itself, but relied on Defendant's pattern of behavior two months after release from parole, selling drugs, buying guns, and engaging in fatal street brawl. (PUCINSKI and MASON, concurring.)

People v. Crabtree, 2015 IL App (5th) 130155 (July 30, 2015) Richland Co. (GOLDENHERSH) Affirmed.
Defendant was convicted, after jury trial, of aggravated criminal sexual abuse, and sentenced to 180 days in county jail and 48 months probation. As conditions of probation, Defendant was ordered to refrain from communicating with or contacting via Internet any non-relative under age 18, to refrain from using social networking sites, and to not use any computer "scrub" software on a computer he uses. Even though computer was not used in underlying offense, conditions are reasonably related to goals of deterrence, protection of public, and rehabilitation. Conditions are limited and do not completely bar Defendant from computer use.(CATES and CHAPMAN, concurring.)

People v. Minter, 2015 IL App (1st) 120958 (June 25, 2015) Cook Co., 4th Div. (ELLIS) Affirmed and remanded.
(Modified upon denial of rehearing 9/3/15.) Defendant was convicted, after jury trial, of armed robbery and sentenced to 23 years. Defendant was not deprived of fair trial by virtue of jury seeing his tattoos. Court erred in improperly favoring State during its closing argument, and preventing Defendant from arguing that he could draw inference contrary to detective's testimony that he did look for a gun.State's evidence establishing Defendant's guilt was strong, and thus court's error during argument did not threaten to tip balance of evidence against Defendant. Court erred in considering Defendant's pending possession of contraband and aggravated battery charges as aggravating factors, as State presented no evidence as to those charges. Charges likely played more than a minimal role in sentencing; thus, remanded for resentencing.(FITZGERALD SMITH, concurring; COBBS, dissenting.)

People v. Scott, 2015 IL App (1st) 131503 (June 30, 2015) Cook Co., 3d Div. (HYMAN) Affirmed.
(Modified upon denial of rehearing 9/15/15.) Defendant was convicted, after jury trial, of second degree murder and sentenced to 18 years. No substantial prejudice shown from prosecutor's rebuttal argument that Defendant fabricated his self-defense theory at trial three years after shooting, as remark was not a material factor in jury's verdict. No substantial prejudice resulted from defense counsel's failure to pursue motion in limine, as no reasonable probability that result of proceeding would have been different. Sentencing court did not abuse its discretion even though sentence was near upper range of permissible sentences. Court placed no emphasis on AUUW conviction itself, but relied on Defendant's pattern of behavior two months after release from parole, selling drugs, buying guns, and engaging in fatal street brawl. (PUCINSKI and MASON, concurring.)

People v. Sauseda, 2016 IL App (1st) 140134 (March 9, 2016) Cook Co., 3d Div. (MASON) Affirmed.
Defendant, on a Saturday afternoon in summer, walked up to a car stopped at intersection and fired 4 shots into the vehicle, missing the driver but killing the passenger. Defendant was convicted, after jury trial, of murder and aggravated discharge of a firearm, and court sentenced him to 55 years for murder and consecutive sentence of 7 years for firearm conviction. In stating, at sentencing, that it was a senseless act with a gun on a street on a Saturday, court did not improperly impose sentence based primarily on the fact that Defendant shot someone with a gun. Court properly considered degree and gravity of conduct and nature and circumstances of offense, and record does not show that court improperly considered element of offenses as aggravating factor. Court weighed aggravating and mitigating factors and sentenced within permissible range.(FITZGERALD SMITH and PUCINSKI, concurring.)

SENTENCING (consecutive \ enhanced \ extended)

People v. Lawson, 2015 IL App (1st) 120751 (March 6, 2015) Cook Co., 6th Div. (LAMPKIN) Affirmed in part and vacated in part.
Defendant was convicted, after jury trial, of four counts of home invasion and aggravated kidnapping, and sentenced to natural life in prison. Three of Defendant's four convictions for home invasion are vacated, pursuant to one-act, one crime rule. Defendant's 2003 armed robbery sentence, which did not include firearm sentencing enhancement, is not void as he was properly sentenced without enhancement four years before ligislature cured proportionate penalties clause violation. Defendant's first Class X felony conviction (armed robbery) occurred when he was 17, but his second Class X (armed robbery) conviction occurred five years later. Natural life sentence was properly imposed, and is not unconstitutional. Defendant's adjudication as armed habitual offender, of which he had fair and ample warning, punished him for new and separate

crime he committed as an adult after two prior Class X felonies. (HALL and ROCHFORD, concurring.)

People v. Arbuckle, 2015 IL App (3d) 121014 (April 21, 2015) Bureau Co. (SCHMIDT) Affirmed.
At plea hearing, court informed Defendant that he was eligible for extended-term sentences on each count charged: aggravated domestic battery and aggravated battery. Court sentenced Defendant to consecutive terms of 5 1/2 years and 4 years, respectively, and stated that among aggravating factors was degree of harm inflicted on victims. Even if court mistakenly believed that Defendant was extended-term eligible, this did not affect sentencing decision, as sentence was well within nonextended range, and thus no clear or obvious error, or plain error, in sentencing. Court's assessment of degree of harm to victims was not abuse of discretion, as Defendant shattered his girlfriend's arm with golf club, resulting in severe and ongoing pain and complications; and Defendant stabbed her friend with broken golf club when she tried to help girlfriend.(WRIGHT, concurring; LYTTON, specially concurring.)

People v. Ramirez, 2015 IL App (1st) 130022 (April 22, 2015) Cook Co., 3d Div. (MASON) Affirmed.
(Modified upon denial of rehearing 5/27/15.) Defendant was convicted, after jury trial, of four counts of attempted first degree murder and sentenced to four concurrent terms of 40 years in prison. Defendant forfeited plain-error review of his allegation that court improperly considered use of a firearm as a factor in aggravation when he had already received mandatory enhanced sentence as firearm was involved. Consideration of improper factor in sentencing does not always constitute structural error. Structural error cases are limited to systemic errors which erode integrity of judicial process. Consecutive sentences are not mandatory for all attempted murder cases involving great bodily harm. (PUCINSKI and HYMAN, concurring.)

People v. Jones, 2015 IL App (3d) 130053 (May 15, 2015) Will Co. (McDADE) Affirmed.
(Court opinion corrected 5/19/15.) Defendant was convicted, after jury trial, of aggravated robbery, and was found extended-term eligible based, in part, on prior adjudication of juvenile delinquency referenced in presentence investigation report (PSI). Prior juvenile petition alleged three counts of residential burglary. Prior adjudication of delinquency is sufficiently analogous to prior conviction so as to fall under exception to Apprendi v. New Jersey rule that except for prior convictions, any fact that increases penalty for crime beyond statutory maximum must be submitted to jury. Thus, fact of prior adjudication may be determined by sentencing court through reference to PSI. (HOLDRIDGE and LYTTON, concurring.)

People v. Reeves, 2015 IL App (4th) 130707 (June 2, 2015) Vermilion Co. (KNECHT) Affirmed.
Defendant appealed court's denial of his motion to amed written sentencin judgment for his consecutive sentences, seeking to apply double credit for simultaneous time served in presentence custody to his sentence for crime committed 10 years after Illinois Supreme Court's ruling in People v. Latona case. Defendant does not, and cannot, raise benefit-of-the-bargain argument where no evidence shows parties ever agreed to specific days of "double credit" for presentence time spent in custody. (HARRIS and STEIGMANN, concurring.)

People v. Robinson, 2015 IL App (1st) 130837 (June 26, 2015) Cook Co., 5th Div. (GORDON) Affirmed in part and reversed in part; remanded with instructions.
Defendant was convicted, after bench trial, of residential burglary and aggravated battery of security guard and resident of apartment building who discovered Defendant attempting to remove his flat screen TV from his apartment. Physical altercation ensued in which Defendant bit off resident's lower lip which, after surgeries, resulted in speech impediment. Court within its discretion in sentencing in making reasonable inference as to long-lasting effects of attack. Defendant had 9 prior residential burglary convictions and was on Mandatory Supervised Release for 8 of those convictions at time of offense. Defendant did not have a substantial change in criminal objective, as his only real objective was to finish burglarizing and then escape, and any harm done to resident was a means to effectuate that objective. Thus, Defendant's effort to escape should not be basis for extended term upon lesser offense. Thus, mittimus is modified to reduce aggravated battery to 5 years, and to run concurrently with 30-year residential burglary sentence. (PALMER and REYES, concurring.)

People v. Minter, 2015 IL App (1st) 120958 (June 25, 2015) Cook Co., 4th Div. (ELLIS) Affirmed and remanded.
Defendant was convicted, after jury trial, of armed robbery and 23 years. Defendant was not deprived of fair trial by virtue of jury seeing his tattoos. Court erred in improperly favoring State during its closing argument, and preventing Defendant from arguing that he could draw inference contrary to detective's testimony that he did look for a gun.State's evidence establishing Defendant's guilt was strong, and thus court's error during argument did not threaten to tip balance of evidence against Defendant. Court erred in considering Defendant's pending possession of contraband and aggravated battery charges as aggravating factors, as State presented no evidence as to those charges. Charges likely played more than a minimal role in sentencing; thus, remanded for resentencing.(FITZGERALD SMITH, concurring; COBBS, dissenting.)

People v. Melvin, 2015 IL App (2d) 131005 (July 16, 2015) Kane Co. (McLAREN) Vacated and remanded.
Defendant entered negotiated guilty plea to attempted predatory criminal sexual assault of a child and sentenced to 60 years. Defendant's sentence is void as it is product of double enhancement.

Specific factor used to enhance penalty, and reused, was Defendant's prior Class X felony. That offense, along with his prior Class 2 felony, subjected him to enhanced penalty of Class X sentence and then also subjected him to further enhanced penalty of extended-term sentence. Thus, sentence to which parties agreed was not statutorily authorized and was thus void. (SCHOSTOK and BIRKETT, concurring.)

People v. Bailey, 2015 Il App (3d) 130287 (August 28, 2015) Tazewell Co. (LYTTON) Reversed and remanded.
Defendant pled guilty to aggravated domestic battery and sentenced to 12 years, and was deemed subject to extended-term sentencing based on prior California conviction. In determining whether a defendant is subject to extended-term sentencing based on prior conviction in another jurisdiction for the same or similar class felony, comparison should include sentencing range of prior conviction with sentencing range of an equivalent Illinois offense. (CARTER and WRIGHT, concurring.)

People v. Reese, 2015 IL App (1st) 120654 (September 24, 2015) Cook Co., 4th Div. (McBRIDE) Affirmed in part, reversed in part, and modified in part.
Defendant was convicted, after jury trial, of aggravated vehicular hijacking, vehicular invasion, attempted armed robbery, and escape, and sentenced to concurrent extended-term sentences of 50, 30, 30, and 14 years, to be served consecutively to natural life sentence he was serving on prior murder conviction. Court violated Defendant's right to due process by failing to undertake a Boose analysis and state reasons for shackling on the record before requiring him to remain shackled at trial, but error was limited and harmless. Where Defendant testified that he tried to escape out of necessity, to expose inhumane conditions in jail, State was entitled to present evidence of jury's finding in prior conviction to establish Defendant faced potential life sentence and sought to escape for that reason. Court substantially complied with Rule 401(a), so his waiver of counsel was valid. As convictions did not arise from unrelated courses of conduct, court could only impose extended term sentence on offenses within most serious class of felony. State failed to prove taking element of vehicular hijacking, as no evidence that he took possession or custody of bus he boarded upon escape from hospital prior to sentencing for murder conviction.(GORDON, concurring; PALMER, specially concurring.)

People v. Johnson, 2015 IL App (4th) 130968 (November 24, 2015) McLean Co. (POPE) Affirmed.
Defendant pled guilty to robbery and aggravated battery and sentenced to probation. Defendant was later convicted of theft and criminal trespass to residence after 2 separate jury trials. Court properly found his convictions for theft and criminal trespass were statutorily required to be consecutively served. Section 5-8-4(c)(1) of Unified Code of Corrections provides that a trial court may impose consecutive sentences where court is of opinion that consecutive sentences are required to protect the public from further criminal conduct by the Defendant. (HARRIS and STEIGMANN, concurring.)

People v. Larry, 2015 IL App (1st) 133664 (December 1, 2015) Cook Co., 2d Div. (HYMAN)
Conviction reversed; extended-term sentence affirmed.
Defendant was convicted of domestic battery and other charges, including residential burglary of his girlfriends's apartment which Defendant claims was his residence too. Evidence established that at the time of the alleged offense, Defendant resided in the apartment, and thus evidence did not establish he entered "the dwelling of another". Due to Defendant's history of domestic violence, court sentenced him to extended, 5-year term for domestic battery, a Class 4 felony. As residential burglary conviction is reversed, Defendant's challenge to sentence as in violation of extended-term sentencing statute no longer exists. (PIERCE and SIMON, concurring.)

People v. Decatur, 2015 IL App (1st) 130231 (December 2, 2015) Cook Co., 3d Div. (MASON)
Affirmed.
Defendant was convicted of 1 year of first-degree murder and 2 counts of attempted murder, and sentenced to total 105 years. Sentence was well within statutory guidelines and was not the product of any error by court. Although Defendant was age 19 at time of offense, and had minimal criminal record, court is not required by law to consider a defendant's age in sentencing.(LAVIN and PUCINSKI, concurring.)

People v. Wilson, 2015 IL App (4th) 130512 (December 3, 2015) McLean Co. (KNECHT)
Affirmed in part and reversed in part; remanded.
Defendant was convicted of 5 counts of predatory criminal sexual assault of a child and 5 counts of aggravated criminal sexual abuse, and sentenced to 5 terms of natural life. Some offenses occurred when Defendant was a minor; victims were Defendant's minor sisters and half-sisters. Court properly admitted testimony on other crimes, as they were proximate in time, within 2 years of charged offenses, similar physical acts, and probative value of other-crimes evidence outweighed its prejudicial effect. Court erred in sentencing Defendant to natural life on counts committed when Defendant was a minor, and on counts which each involved only one victim. Thus, those mandatory natural-life sentences violate 8th-Amendment prohibition against cruel and unusual punishment.(POPE and HOLDER WHITE, concurring.)

People v. Brown, 2015 IL App (1st) 140508 (December 23, 2015) Cook Co., 3d Div. (MASON)
Vacated and remanded.
Defendant, age 20 at time of offense, was convicted, after bench trial, of possession of heroin with intent to deliver and sentenced as Class X offender due to his prior felony convictions. Section 5-4.5-95(b) of Unified Code of Corrections is ambiguous as to whether eligibility for Class X sentencing depends on whether Defendant is age 21 as of date of commission, charge, or conviction. Thus, statute is interpreted under rule of lenity in favor of Defendant, who was charged with offense on day prior to his 21st birthday, and he is thus ineligible for Class X sentencing. (PUCINSKI, concurring; LAVIN, dissenting.)

People v. Smith, 2016 IL App (2d) 130997 (February 8, 2016) Winnebago Co. (SCHOSTOK)
Affirmed in part and vacated in part; remanded.
Defendant was convicted, after jury trial, of armed robbery with a firearm and sentenced to 20 years with mandatory add-on of 15 years. Defendant's 2003 Aggravated Unlawful Use of a Weapon (AUUW) conviction was based on an unconstitutional statute, and thus court erred in relying on it in sentencing him, and error was not harmless. Resentencing is required also because appellate court reversed Defendant's 2013 Cook County conviction for AUUW by a felon. (JORGENSEN and BIRKETT, concurring.)

People v. Smith, 2016 IL App (1st) 140496 (February 24, 2016) Cook Co., 3d Div. (MASON)
Affirmed as modified and vacated in part; remanded.
Defendant was convicted, after bench trial, of unlawful use of a weapon (UUW) by a felon and sentenced as a Class X offender to 9 years. Residual category of forcible felony statute refers to felonies not previously specified in preceding list of felonies contained within that section. As Defendant's prior conviction of aggravated battery to a peace officer was not based on great bodily harm or permanent disability or disfigurement, it was not within statutory definition of forcible felony, and court erred in using it to enhance Defendant's present aggravated battery conviction to a Class 2 offense. Illinois Supreme Court has, in 2015, abolished void-sentence rule. (FITZGERALD SMITH and LAVIN, concurring.)

People v. Smith, 2016 IL App (1st) 140887 (March 1, 2016) Cook Co., 2d Div. (PIERCE)
Affirmed as modified.
Defendant"s 60-year extended term sentence for aggravated criminal sexual assault and 40-year extended term sentences for home invasion and armed robbery are unauthorized by law, as trial court did not find the required factors listed in Section 5-5-3.2(b) of Unified Code of Corrections when it sentenced Defendant to extended term sentence. Illinois Supreme Court's 2015 decision in Castleberry, was abolished the void-sentence rule, did not announce a new rule, but reinstated the rule that a sentence that did not comply with statutory guidelines was only void if court lacked personal or subject matter jurisdiction. Thus, the Castleberry holding cannot be applied retroactively, and Defendant has the right to challenge his sentence for the first time on appeal. (NEVILLE and SIMON, concurring.)

People v. Fulton, 2016 IL App (1st) 141765 (March 31, 2016) Cook Co., 1st Div. (LIU)
Affirmed.
Defendant was not subjected to improper double enhancement where his conviction for delivery of a controlled substance was only used once, as a predicate felony, to support his conviction as an armed habitual criminal. Defendant was originally charged as being an armed habitual criminal and the 2 predicate offenses (delivery of a controlled substance and UUWF) were used only once each as element of armed habitual criminal offense. No harsher sentence was imposed, and severity of offense was never elevated. The armed habitual criminal statute is not

unconstitutional where statute is rationally related to public interest.(CUNNINGHAM and CONNORS, concurring.)

People v. Cole, 2016 IL App (1st) 141664 (March 30, 2016) Cook Co., 3d Div. (FITZGERALD SMITH) Affirmed.
Defendant was convicted, after jury trial, of 2 counts attempted first degree murder and 2 counts of aggravated battery with a firearm, and was sentenced to 2 terms of 20 years, on attempted murder convictions, to be served concurrently. On remand, court held new sentencing hearing, and resentenced defendant to 2 consecutive terms of 15 years. Court did not impose a harsher sentence on remand, as the term to which he was sentenced has decreased from 40 to 30 years, even though the time he will be incarcerated has increased. Sentence is not excessive; court reviewed Defendant's presentence investigation report, considered appropriate mitigating and aggravating factors, and sentenced Defendant to a term within permissible range. (MASON and LAVIN, concurring.)

SENTENCING (msr / credit)

People v. Sumler, 2015 IL App (1st) 123381 (March 26, 2015) Cook Co. (FITZGERALD SMITH) Affirmed in part and vacated in part; remanded.
(Court opinion corrected 4/2/15.) Defendant was convicted, after jury trial, of aggravated kidnapping, violation of order of protection, and domestic battery as to the mother of his three children. Under truth-in-sentencing provisions, a person convicted of certain offenses, including aggravated kidnapping, would receive no more than 4.5 days of credit for each month of his sentence. Thus, Defendant must serve at least 85% of his sentence, and does not receive normal day-for-day good-conduct credit. As sentencing court and attorneys may have believed Defendant would be eligible for day-to-day credit, which may have influenced sentence, remanded for reconsideration of sentence. Conviction for domestic battery violated one-act, one-crime doctrine because it was a lesser included offense of aggravated kidnapping predicated on domestic battery.(HOWSE and COBBS, concurring.)

People v. Saterfield, 2015 IL App (1st) 132355 (June 12, 2015) Cook Co., 5th Div. (McBRIDE) Affirmed.
(Court opinion corrected 6/22/15.) Court properly dismissed, sua sponte, Defendant's pro se petition for postjudgment relief, finding it frivolous and patently without merit. Petition alleged that truth-in-sentencing statute is unconstitutional. Statute was amended and constitutional infirmity was corrective, and thus act is no longer unconstitutional as applied to offenses committed after June 1998. Defendant's offenses were committed in August 1999. Time for State to respond to petition was not short-circuited. State received petition prior to date it was file-stamped, State had actual notice, and chose not to object to dismissal thus waiving any objection to improper service. (REYES, concurring; GORDON, dissenting.)

People v. Chacon, 2016 IL App (1st) 141221 (March 1, 2016) Cook Co., 2d Div. (PIERCE) Vacated.
Defendant was convicted, after jury trial, of first degree murder, and later filed pro se motion to modify-correct a void sentence, arguing that DOC improperly added 3-year term of mandatory supervised release (MSR) not imposed by trial court. Section 22-105 of Code of Civil Procedure applies to Defendant's motion, as motion is an action against the State within meaning of Section 22-105. Motion had an arguable basis in law and was not frivolous. Trial court alone has power to assign term of MSR, and DOC may not alter trial court's pronouncement. Thus, court's order imposing fees and costs against Defendant is vacated. (NEVILLE and HYMAN, concurring.)

People v. Brown, 2016 IL App (2d) 140458 (March 8, 2016) Winnebago Co. (JORGENSEN) Affirmed.
Defendant entered negotiated plea of guilty to second-degree murder and armed robbery, with agreement to sentence of consecutive terms of 20 years and 10 years; and court admonished him that he would have to serve 2 years and 3 years of MSR, but was unsure whether MSR terms coudl be served concurrently. Mittimus states that he would serve MSR terms consecutively, which is a statutory violation. A sentence is void only if the court that entered it lacked jurisdiction. As court had jurisdiction to impose Defendant's sentence, including unauthorized MSR term, is not void. Thus, as there is no arguably meritorious basis to challenge dismissal of Defendant's Section 2-1401 petition, court properly granted appellate counsel's motion to withdraw.(SCHOSTOK and HUTCHINSON, concurring.)

SENTENCING (proportionality)

People v. Davis, 2015 IL App (1st) 121867 (January 20, 2015) Cook Co.,1st Div. (DELORT) Affirmed.
Separate juries returned verdicts convicting Defendant of two 1985 armed robberies. In doing so, juries rejected Defendant's version of events, set forth in his postconviction petitions, that weapon at issue was a toy gun. Eyewitness testimony that offender was armed with a gun, where witness could see the weapon, is sufficient to allow reasonable inference that weapon was a real gun. Defendant's Class X felony armed robbery convictions may not properly be compared to Class 2 felony offense of armed violence with a category II weapon. Thus, no disproportionality exists, as a conviction under either statute would be a Class X felony subjecting Defendant to mandatory natural life sentence as a habitual offender. Thus, Defendant's adjudication as a habitual criminal, convictions and natural life sentences do not violate proportionate penalties clause. (CUNNINGHAM and CONNORS, concurring.)

People v. Taylor, 2015 IL 117267 (January 23, 2015) Macoupin Co. (GARMAN) Reversed and remanded.
Defendant was convicted of armed robbery and sentenced to 24 years. Enhanced sentenced for armed robbery with a firearm violated proportionate penalties clause, and thus Defendant's sentence is facially unconstitutional and void ab initio. Matter remanded to circuit court for resentencing in accordance with statute as it existed prior to adoption of sentencing enhancement. (FREEMAN, THOMAS, KILBRIDE, KARMEIER, BURKE, and THEIS, concurring.)

People v. Lampkins, 2015 IL App (1st) 123519 (January 28, 2015) Cook Co., 3d Div. (HYMAN) Reversed and remanded.
Defendant, age 17 at time of offense, was convicted of multiple offenses, including Aggravated Criminal Sexual Assault (ACSA) with a firearm. Defendant's 15-year firearm enhancement imposed in addition to his 12-year sentence on conviction for ACSA violated proportionate penalties clause of Illinois Constitution because it provided harsher sentence for ACSA than for armed violence predicated on criminal sexual assault. Offense occurred in 2006, which was prior to 2007 effective date of amendment which cured proportionate penalties violation. (PUCINSKI and MASON, concurring.)

People v. Schweihs, 2015 IL 117789 (December 3, 2015) Kane Co. (THEIS) Circuit court reversed; remanded.
Section 24-1.6(a)(1), (a)(3)(C) of the Aggravated Unlawful Use of a Weapon (AUUW) statute does not violate the proportionate penalties clause of the Illinois Constitution, or the equal protection clauses of the U.S. and Illinois Constitutions. The location element in Section 24-1.6(a)(1) remains a viable element of the AUUW statute when combined with subsection (a)(3)(C).(GARMAN, FREEMAN, THOMAS, KILBRIDE, KARMEIER, and BURKE, concurring.)

SEX CRIMES (registration)

People v. Roe, 2015 IL App (5th) 130410 (January 6, 2015) Williamson Co. (WELCH) Affirmed.
Defendant was convicted, after stipulated bench trial, of failure to register as a sex offender. In reading language in count and statute together, reference in charging instrument to registering within three days of conviction is not a denial of due process. Any variance between charging instrument and proof does not require reversal of conviction, as it was not material, misleading, or likely to expose Defendant to possibly double jeopardy. Defendant was afforded sufficient notice of charge and was given meaningful opportunity to defend himself against the charge. (STEWART and SCHWARM, concurring.)

In re Maurice D., 2015 IL App (4th) 130323 (May 29, 2015) McLean Co. (HARRIS) Affirmed.
After bench trial, court adjudicated Respondent minor, age 17 at time of offense, delinquent, finding evidence supported conviction for criminal sexual abuse beyond a reasonable doubt. Respondent must thus register as a sex offender. Evidence was conflicting as to whether victim, then age 15, voluntarily engaged in sexual act. Neither eighth amendment cruel and unusual punishment clause nor proportionate penalties clause apply to Respondent's juvenile adjudication. Juvenile Court Act does not provide juvenile with substantive rights, such as substantive due process. Criminal sexual abuse statute is rationally related to legislative purpose of protecting 13 to 16 year olds from premature sexual experiences. (POPE and KNECHT, concurring.)

People v. Stavenger, 2015 IL App (2d) 140885 (July 9, 2015) DuPage Co. (SCHOSTOK) Affirmed.
Defendant pled guilty to possession of child pornography. Because registering as a sex offender is not part of Defendant's sentence, does not place any actual restraint on his liberty, and is merely a collateral consequence of his conviction, Defendant lacks standing to bring a postconviction petition under the Post-Conviction Hearing Act. (HUTCHINSON and BURKE, concurring.)

People v. Brock, 2015 IL App (1st) 133404 (November 23, 2015) Cook Co., 1st Div. (CUNNINGHAM) Reversed in part, affirmed in part, vacated in part, and remanded for resentencing.
Defendant was convicted, after bench trial, of failure to report in person within 90 days of his last date of registry and failure to report his change of address within 3 days as a registered sex offender. Sex Offender Registration Act imposes a separate and additional duty on those sex offenders specifically adjudicated "dangerous" or violent", and legislature intended to distinguish a duty to report that does not simply duplicate the registration requirement. Registration requires the creation of a signed writing. Section 6 does not mention a registration requirement, and thus a defendant may satisfy his duty simply by reporting. Conviction for failure to report address change within 3 days is affirmed. Defendant's prior conviction for aggravated criminal sexual assault was improperly used as both an element of the offense and as a basis for imposing a mandatory Class X sentence, thus resulting in improper double enhancement. (LIU and HARRIS, concurring.)

People v. Avila-Briones, 2015 IL App (1st) 132221 (December 24, 2015) Cook Co., 4th Div. (ELLIS) Affirmed.
Defendant, aggravated criminal sexual abuse for having sex with a 16-year-old girl when he was 23 years old, argues for unconstitutionality of Sex Offender Registration Act, Sex Offender Community Notification Law, and other related statutes. Statutory scheme does not violate the eighth amendment or proportionate penalties clause, and is not a grossly disproportionate sentence for Defendant's offense, and serves legitimate penological goals. Statutory Scheme does

not violate procedural or substantive due process, and is rationally related to goal of protecting public from possibility that sex offenders will commit new crimes. (HOWSE and COBBS, concurring.)

People v. Howard, 2016 IL App (3d) 130959 (January 13, 2016) Peoria Co. (WRIGHT) Affirmed.
Police officer discovered Def ndant, a registered sex offender, sitting in vehicle parked within 15 feet of school property while children were present and playing on school playground. Defendant was convicted of felony offense of being present in a school zone as a child sex offender. Statutory scheme clearly delineates a 500-foot zone surrounding school property, and prohibits certain conduct during specific time when children under age 18 are present. Sex offenders who, like Defendant, are not a parent of a child in the school, cannot be present in restricted school zone for any purpose, lawful or unlawful, when children are present.(CARTER, concurring; McDADE, dissenting.)

People v. Armstrong, 2016 IL App (2d) 140358 (March 22, 2016) DuPage Co. (BURKE) Reversed and remanded.
(Court opinion corrected 3/31/16.) Defendant entered negotiated plea of guilty to one count of failing to register as a sex offender, and was sentenced to 3 years. On remand, Defendant filed pro se postjudgment motion, with court denied. Trial counsel rendered ineffective assistance of counsel. Counsel was aware that charge was predicated on conviction of unlawful restraint, which was not per se a sex offense, and victim's age was not put before the court during that case. It is reasonably probable that had Defendant realized that he could not be properly convicted of violating the Act, he would have forgone entering his plea and would have gone to trial. (SCHOSTOK and JORGENSEN, concurring.)

SHACKLING

People v. Reese, 2015 IL App (1st) 120654 (September 24, 2015) Cook Co., 4th Div. (McBRIDE) Affirmed in part, reversed in part, and modified in part.
Defendant was convicted, after jury trial, of aggravated vehicular hijacking, vehicular invasion, attempted armed robbery, and escape, and sentenced to concurrent extended-term sentences of 50, 30, 30, and 14 years, to be served consecutively to natural life sentence he was serving on prior murder conviction. Court violated Defendant's right to due process by failing to undertake a Boose analysis and state reasons for shackling on the record before requiring him to remain shackled at trial, but error was limited and harmless.(GORDON, concurring; PALMER, specially concurring.)

SPEEDY TRIAL

People v. Raymer, 2015 IL App (5th) 130255 (February 25, 2015) Saline Co. (CATES) Affirmed.
Defendant was charged with 3 separate felonies (driving while license revoked, unlawful use of a credit card, and escape), and held in simultaneous custody on all 3 cases. State elected to prosecute driving-on-revoked charge first, but failed to bring any case to trial within 120 days from date Defendant was placed in custody. Thus, Defendant's statutory right to speedy trial was violated, and court properly dismissed charges with prejudice. Commencement of trial, or adjudication of guilt after waiver of trial, on at least one pending charge, and not mere election of which charge to be tried first, that provides additional time to try unelected charges. (GOLDENHERSH and CHAPMAN, concurring.)

People v. Moody, 2015 IL App (1st) 130071 (October 29, 2015) Cook Co., 1st Div. (COBBS) Affirmed in part and reversed in part; remanded with instructions.
Defendant was convicted of first degree murder and aggravated kidnapping pursuant to Section 10-2(a)(3) of Criminal Code, and sentenced to consecutive terms of 60 years and 25 years. Court erred in denying Defendant's motion to dismiss murder charges for violation of Defendant's right to a speedy trial. Continuances obtained in connection trial of original charges cannot be attributed to Defendant as to new and additional charges when these new and additional charges were not before the court when continuances were obtained. (HOWSE and ELLIS, concurring.)

People v. McGee, 2015 IL App (1st) 130367 (October 29, 2015) Cook Co., 4th Div. (COBBS) Affirmed in part and reversed in part; remanded with instruction.
Defendant was convicted of first degree murder and aggravated kidnapping and sentenced to consecutive terms of 60 years and 25 years in prison. Defendant was lawfully seized, and thus lineup identifications were properly admitted into evidence. State violated Speedy Trial Act by charging Defendant with first-degree murder 18 months after Defendant was charged with attempted murder, aggravated battery, aggravated kidnapping, and unlawful restraint. Victim was kidnapped and beaten in Chicago but was found dead in Gary, Indiana. State had knowledge that at least part of the injuries that caused victim's death occurred in Illinois. At time of original indictment State had a conscious awareness of evidence that is sufficient to give State a reasonable chance to secure a conviction.(HOWSE and ELLIS, concurring.)

STATUTE OF LIMITATIONS

People v. Chenoweth, 2015 IL 116898 (January 23, 2015) Adams Co. (FREEMAN) Appellate court reversed and remanded.
Defendant was convicted, after bench trial, of financial exploitation of an elderly person and sentenced to four years probation and ordered to pay restitution. Elderly victim did not "discover the offense", within meaning of Section 3-6(a)(2)'s extended limitations period, prior to prosecuting officer becoming aware of the offense, when it received police investigation file. This event activated Section 3-6(a)(2), and thus Defendant was indicted within that section's one-year extended limitations period. (GARMAN, THOMAS, KILBRIDE, KARMEIER, BURKE, and THEIS, concurring.)

People v. McCullough, 2015 IL App (2d) 121364 (February 11, 2015) De Kalb Co. (ZENOFF) Affirmed in part and vacated in part.
Defendant was convicted, after bench trial in 2012, of of 1957 kidnapping and murder of seven-year-old girl, when Defendant was age 18. Sentences for kidnaping and abduction vacated, as State did not adduce any proof that would toll 3-year limitations periods, and Defendant was sentenced to natural life for murder.(SCHOSTOK and BURKE, concurring.)

People v. Lutter, 2015 IL App (2d) 140139 (May 18, 2015) Du Page Co. (ZENOFF) Reversed. (Court opinion corrected 5/29/15.) Defendant was convicted, after bench trial, of reckless driving. Information showed on its face that it was filed beyond statute of limitations. Establishing that statutory exception tolled limitations period was element of State's case that it had to prove beyond a reasonable doubt at trial, but State failed to do so. Defendant was not required to file motion to dismiss, and he did not waive State's obligation to prove this element at trial by not filing motion to dismiss.(SPENCE, specially concurring; BURKE, dissenting.)

SVP/SDP

In re Detention of Carpenter, 2015 IL App (1st) 133921 (August 4, 2015) Cook Co., 2d Div. (SIMON) Affirmed.
After bench trial, court entered judgment finding Defendant a sexually violent person subject to commitment under Sexually Violent Persons Commitment Act. The Act does not require appointment of evaluator on behalf of a person subject to a petition until after probable cause hearing and in preparation for trial. Court was within its discretion in granting State's motion to extend time to answer Defendant's requests to admit, as Assistant Attorney General took responsibility for inadvertence and error in not timely responding to motion, and no evidence of wrongdoing or prejudice shown.(PIERCE and LIU, concurring.)

People v. Kastman, 2015 IL App (2d) 141245 (September 30, 2015) Lake Co. (HUTCHINSON) Certified question answered; remanded.
Under 1999 People v. McDougle (Second District) case, the judicial review of the adequacy of a sexually dangerous person's treatment should occur in the court that committed the offender. (SCHOSTOK and BURKE, concurring.)

People v. Bailey, 2015 IL App (3d) 140497 (October 1, 2015) Iroquois Co. (McDADE) Vacated and remanded with instructions.
Defendant, having been found a sexually dangerous person in 2007, filed a pro se petition 5 years later alleging recovery. After bench trial, court found that Defendant remained an SDP. A trial court's failure to make a finding that there was a substantial probability Defendant would engage in commission of sex offenses in the future if not confined may not be harmless error. A finding of sexual dangerousness must be accompanied by a substantial probability finding. Error must not necessarily result in outright reversal of order, but may be remanded for rehearing. (WRIGHT, concurring; SCHMIDT, concurring in part and dissenting in part.)

In re Commitment of Kirst, 2015 IL App (2d) 140532 (September 30, 2015) Lee Co. (BIRKETT) Affirmed.
Overwhelming evidence established that Respondent was still a sexually violent person (SVP); thus, no probable cause existed to warrant an evidentiary hearing. Court did not err in finding that no probable cause existed to warrant evidentiary hearing on issue of whether is still an SVP. Court properly denied Respondent's motion for independent examiner as part of his periodic reexamination under SVP Act, as he failed to demonstrate that such an appointment was crucial to his defense. (HUTCHINSON and BURKE, concurring.)

In re Commitment of Simons, 2015 IL App (5th) 140566 (December 1, 2015) Madison Co. (WELCH) Affirmed.
Respondent, a sexually violent person committed to Department of Human Service, filed petition for discharge and motion to appoint an expert, when circuit court properly denied as untimely.Respondent has refused to participate in reviews and in sex offender treatment over the past year. Petitions for discharge may be filed only in limited period of time, which is after receiving notice of Respondent's right to petition at time of yearly reexamination, but before the probable cause hearing. Respondent's petition was untimely, as he filed it after the probable cause hearing. Respondent's request was not a valid postjudgment motion, as it was not directed at the previous judgment. (GOLDENHERSH and CHAPMAN, concurring.)

People v. Holmes, 2016 IL App (1st) 132357 (January 11, 2016) Cook Co., 1st Div. (CONNORS) Affirmed.
After bench trial, Defendant was found to be a sexually dangerous person and committed to custody of Department of Corrections. Defendant had been convicted of 3 sex offenses in 3 different states over 6 years. Court only limited how prior allegation was characterized and

avoided confusion about whether allegation was false, and court did not prohibit all cross-examination about substance of Defendant's question. State proved that Defendant had serious difficulty controlling his sexual behavior, and court made an explicit "substantial probability finding". Court made finding of sexual dangerousness based on requirements of the Sexually Dangerous Persons Act. Evidence was sufficient to find that Defendant had all 3 mental disorders raised by the experts. (LIU and HARRIS, concurring.)

TRAFFIC

People v. McLeer, 2015 IL App (2d) 140526 (February 27, 2015) McHenry Co. (BURKE) Affirmed.
Defendant's driving privileges were summarily suspended after he refused to submit to blood alcohol testing. At hearing, court allowed State to amend arresting officer's "Sworn Report" to indicate date Defendant was given notice. Officer's failure to fill in blank line on Sworn Report asking for when Notice of Suspension/Revocation was given was not a fatal defect warranting rescission of statutory summary suspension. Sworn Report listed date Defendant refused testing, indicated that notice of suspension was served on Defendant immediately, and stated that it was signed on same date. From that information, Secretary of State had sufficient information to calculate and confirm suspension. (SCHOSTOK and ZENOFF, concurring.)

People v. Williams, 2015 IL App (1st) 133582 (November 3, 2015) Cook Co., 2d Div. (HYMAN) Reversed.
Defendant was convicted, after bench trial, of aggravated fleeing or attempting to elude a peace officer. Officer was sitting in a marked police car wearing "civilian dress", and saw Defendant's vehicle not fully come to a stop at a stop sign; officer then activated emergency lights and siren, and pursued Defendant, who continued to pull away from squad car. Conviction for that offense requires State prove pursuing officer was wearing a police uniform. Because officer who stopped Defendant was out of uniform and in civilian clothes, State failed to satisfy an essential element of the offense: the uniform of the police officer. (NEVILLE and SIMON, concurring.)

People v. Grandadam, 2015 IL App (3d) 150111 (December 2, 2015) LaSalle Co. (O'BRIEN) Affirmed in part and reversed in part.
Defendant was convicted, after bench trial, of driving while license revoked, operating an uninsured motor vehicle, no valid registration, and disobeying a traffic control device. Defendant had been riding a bicycle powered with a 3/4 hp motor; Defendant testified that one must pedal the bicycle up to 8-10 mph before activating the motor, and when pedaling in conjunction with the motor, it can travel 25-30 mph. State failed to prove beyond a reasonable doubt that the motorized bicycle was a motor vehicle under the Motor Vehicle Code; thus, first 3 convictions are reversed. Offense of disobeying a traffic control device applied to Defendant even if he was

not operating a "motor vehicle". Thus, that conviction is affirmed.(McDADE and WRIGHT, concurring.)

People v. McGuire, 2015 IL App (2d) 1131266 (December 23, 2015) McHenry Co. (HUDSON) Affirmed.
Defendant was convicted, after jury trial, of aggravated operating a watercraft under the influence of alcohol in violation of section 5-16(A)(1) of the Boat Registration and Safety Act. Defendant argued that Boat Act was repealed by implication, because both that Act and the Motor Vehicle Code punish peration of watercraft under the influence, where a death occurs, as a Class 2 offense, but only the Vehicle Code requires proof that the offense proximately caused the death.The plain language of the statute makes clear that watercraft are not vehicles. Two statutes are not in conflict such that one statute cannot stand. (McLAREN and BIRKETT, concurring.)

People v. Lee, 2016 IL App (2d) 150359 (January 28, 2016) Kane Co. (SCHOSTOK) Affirmed.
Court properly denied Defendant's petition to rescind statutory summary suspension (SSS) of his driver's license, after he was charged with DUI. Court's finding that arrest took place in South Elgin was against manifest weight of evidence, as arresting police officer, who was on South Elgin City Police Department, testified that arrest was within Kane County's jurisdiction. If officer had probable cause to believe that Defendant was speeding within South Elgin, he was authorized to arrest Defendant outside of South Elgin. Officer used radar to monitor Defendant's speed while Defendant was driving within South Elgin, and thus he was performing official duty within his jurisdiction.(ZENOFF and BIRKETT, concurring.)

MISC

People v. Williams, 2015 IL App (2d) 130585 (February 27, 2015) Winnebago Co. (SPENCE) Affirmed.
Defendant pled guilty to aggravated discharge of a firearm, and sentenced to 36-month term of probation. Court then held hearing on revocation of probation Court ejected three spectators from revocation hearing, after prosecutor complained that spectators had followed citizen witnesses from courthouse. Whether there is a constitutional right to a public hearing on probation revocation hearing is not sufficiently settled to permit review under plain-error rule. (ZENOFF and BURKE, concurring.)

People v. Clendenny, 2016 IL App (4th) 150215 (January 26, 2016) Calhoun Co. (APPLETON) Affirmed.
Defendant pled guilty to reckless homicide, and was sentenced to 30 months' probation, including 18 months' periodic imprisonment as a condition of probation. As record does not indicate Defendant's employment was comparable to a county work-release program, his 18-month periodic imprisonment sentence is valid. Court's reference to the probation condition as

"work release" was not indicative of court's intent to impose a sentence that qualified as a program comparable to a county or state work-release program. Defendant's release was not limited strictly to employment, as he was ordered to participate in alcohol evaluation and treatment, and was allowed to attend birth of his child and remain with his wife during her hospitalization. (KNECHT and POPE, concurring.)